BEFORE THE
ILLINOIS COMMERCE COMMISSION

| | | |
|---|---|---|
| IN THE MATTER OF: | ) | |
| | ) | |
| PROPOSED GENERAL INCREASE IN | ) | |
| RATES FOR DELIVERY SERVICE | ) | No. 05-0597 |
| (TARIFFS FILED ON AUGUST 21, | ) | |
| 2005) | ) | |
| | ) | |

Chicago, Illinois
July 21, 2006

Met, pursuant to notice, at 10:30 a.m.

BEFORE:

THE COMMISSION, en banc

APPEARANCES:

FOLEY & LARDNER, LLP
MR. GLENN RIPPIE
MS. ANASTASIA M. O'BRIEN
321 N. Clark Street
Suite 2800
Chicago, Illinois 60610
(312) 832-4910
Appearing for Commonwealth Edison;

CITIZENS UTILITY BOARD, by
MS. JULIE SODERNA
208 S. LaSalle Street
Suite 1760
Chicago, Illinois 60604
312.263.4282
Appearing for the
Citizens Utility Board;

ILLINOIS COMMERCE COMMISSION, by
MR. SEAN BRADY
MR. CARMEN FOSCO
MR. JOHN FEELEY
MS. CARLA SCARSELLA
160 N. LaSalle, Suite C-800
Chicago, Illinois 60606
for the The Staff of the ICC;

ILLINOIS ATTORNEY GENERAL, by
MR. RISHI GARG
100 W. Randolph
Floor 11
Chicago, Illinois 60601
(312) 814-8496
Appearing for the
Illinois Attorney General;

DLA Piper, Rudick, Grey, Cary, by
MR. CHRISTOPHER TOWNSEND
Appearing for the Coalition of
Energy Suppliers

LEADERS, ROBERTSON AND KONZEN
Granite City, Illinois
MR. ERIC ROBERTSON
AND MR. CONRAD REDDICK

SULLIVAN REPORTING COMPANY, by
Carla L. Camiliere, CSR,
License No. 084-003637

# I N D E X

CHAIRMAN BOX: Let me call the oral arguments. Present are Commissioners Wright, Ford, O'Connell-Diaz, Lieberman and myself, Chairman Box.

The time now is 10:35. We are in quorum. We will now proceed.

Before we get started this morning, I would like to remind the parties that you have at least 5 minutes to present your arguments on each issue and you may reserve part of that time for rebuttal. The commissioners may ask questions during that presentation.

Then at the end of all the parties' presentation on the issues, and we have seven issues this morning. Some have been consolidated, but seven different topics.

At the end of each one, the commissioners ask questions in addition to during the presentations. While only the attorneys may present the oral arguments, you may rely on other attorneys tech advisors to assist in asking the questions, if necessary. I'm pretty flexible when it comes to these particular hearings until it becomes abusive.

Hopefully we are here to really sort out any issues and answer any questions that have been asked.

Paul is handling the 5 minutes. He, I'm sure he'll be generous until it's abused, and then we'll have to tighten up.

But we are here to explore the issues to gather the information so we can make the best decision that we can.

We will now start the hearing.

Are people listening in Springfield?

SPRINGFIELD: Yes, we are.

CHAIRMAN BOX: We have four individuals speaking. The first will be E. Glenn Rippie from Commonwealth Edison. The second will be Sean Brady from the Staff of the Illinois Commerce Commission. Third, Eric Robertson from the Illinois Industrial Energy Consumers, and Christopher Townsend from the Coalition of Energy Suppliers.

Mr. Rippie?

ORAL ARGUMENT

BY

MR. RIPPIE:

Q Thank you, Chairman Box and Commissioners. My name is Glenn Rippie, and I'm counsel for ComEd.

You should have printed copies of the various visual aids before you.

Commonwealth Edison proved that the general and intangible plant in its rate base is used and useful in delivering electricity and was acquired prudently and at an reasonable cost.

It did that with voluminous an uncontradicted testimony and documentation. No other party identified any GP or IP asset. It was imprudent, unreasonable or necessary.

Indeed, neither Staff or IIC witnesses did any analysis of those specific assets. Staff's witness while he argued against ComEd's general approach admitted that he identified no errors in its schedules or work papers. And IIC's witness also claims no such error.

The attacks then on the proposed order

would simply rip hundreds of millions of dollars of assets from ComEd's rate base without regard for what they actually are or how they're actually used. As illustrated on the slide they're the tools, vehicles, buildings, land and computer systems that ComEd uses to run its delivery system.

None the less, some argue that the functionalization estimate from the 2001 case requires a $304 million disallowance here. That is wrong for three reasons.

First, you cannot disallow plant in this case based on an estimate of the share of plant that was generation related in the last case. That estimate was for 2000 plant and used 1999 labor data. It is inapplicable to the pure wireless company that ComEd is and events showed it to be significantly overstated. ComEd, as we know, was a very different company then. It owned nuclear generation, and in '99 owned fossil generation. The circumstances were quite different. It was quite reasonable then for General Plant and Intangible Plant to support those generators, but those generators are gone. The validity of that estimate was, therefore, short lived. What changed?

First, of course, the generators are gone. And pointing to estimates from 2001 can't change that.

Second, ComEd actually transferred all the general and intangible plants that supported those generators, $164 million of it, when it sold the generators. It was transferred under the supervision and review of the Commission. None remains in the proposed rate base.

Now, some may complain that when the generators were transferred less general and intangible plant went with them than had been estimated, but that has it backwards. We cannot cling to an estimate in the face of real events when they happen. We should not deceive ourselves that some part of $304 million of assets remain out there supporting nonexistent generators. It's just not true.

Second, that disallowance would be unfaithful to the order itself. It was known when the order was written that ComEd was restructuring. And the Commission did not make the 2001 allocator a benchmark for the future. It did exactly the opposite; saying and I quote: "That it was for the purposes of this proceeding only and without regard to prejudging any issues that may arise in future cases concerning the allocation of general and intangible plant using other test years."

Third, even if there was generation general and intangible plant out there, this is a general rate case. No one claims that plant was not used or useful. No one claims it's imprudent. If it's in the rate base and labeled generation, it should be collected just through the supply charge instead of through the delivery charge. Other parties may also comment on that argument.

So one question remains, Why did general and intangible plant appear to go up so much? The short answer is: In fact it didn't.

The increase in ComEd's total general and intangible plant was approximately 32 percent over that period, entirely consistent with ComEd's growing needs and investments. The claim that there was a huge 140 percent plus increase is based solely on dividing the 2004 actual number by the 2001 estimates, comparing actual apples with a dated estimate of oranges. There is no evidence at all of any questionable increase in general and intangible plant.

I reserve my remaining little less than a minute for rebuttal.

CHAIRMAN BOX: Thank you.

Mr. Brady?

MR. BRADY: I need one second.

Good morning, Chairman, Commissioners. I'm Sean Brady. I will be presenting on behalf of the Staff of the Illinois Commerce Commission.

In this case ComEd is asking for level of G&I plant in excess of $1 billion.

That is an increase over the final order, the final order of their previous rate case, of 142 percent.

ComEd has the obligation in this case to explain why it needs such an extraordinary increase because these are the dollar amounts that are being transferred and passed onto the ratepayers.

When ComEd filed its rate case, Staff reviewed the documents and plainly asked the question:  Please identify and explain the factors causing a $633 million increase in G&I plant.

Staff received a response and of relevance we quoted in our testimony the particular aspect that we have focused on.  And it says on the top, it's a little smaller to read:  ComEd's response was, therefore, all of the things equal, ComEd's starting point for G&I plant results in a $405 million increase.

So, therefore, and double underscore is Staff's position on this, does this decision by ComEd to restore the $405 million removed by the Commission in ComEd's last DST rate case that provides the basis for our adjustment in this case.

So let's understand where this $405 million comes from.

If you look at this first column here, you have what ComEd proposed in its original rate case in 2001. They proposed for G&I plant of $850 million.

They also proposed a method of allocating G&I plant using direct assignment allocators.

The Commission in its final order decided not to go with method of allocating G&I, but with the general labor allocator.

The impact of that is the reduced, the level of G&I plant requested, from 850 million to 446 million. That's the $405 million adjustment that we're talking about.

That 405 million, because at that time they had distribution transmission production, was reallocated to distribution to production.

Based on ComEd's rebuttal testimony that did identify in that round that there was some retired plant from 2000. So we reduced our overall adjustment from 405 million to 304 million.

So, essentially, what ComEd is seeking to do here is to reallocate plant that the Commission had previously decided was in production back into distribution in this case.

Now that is not to say they cannot do such a thing, but if they are, they have to explain why delivery services requires such a large increase. What's happened over the last four years? ComEd has failed to do so in this case.

The Commission had a very similar issue four years ago with IP in their 2002 rate case.

Now in that rate case, and back in 1999 Illinois Power had divested itself of generation just like ComEd has divested itself of its generation.

In 2001 IP applied for its DST rate case and attempted to attribute a substantial portion of G&I to distribution.

In that DST case, the Commission acknowledged that G&I may have always supported distribution, but it was allocated among all the lines of business for ratemaking purposes. The lines of business being distribution, transmission, production.

And its conclusion, the Commission

stated there has been no showing that the remaining lines of business, the distribution, the delivery services that we have here, which is similar to what we have in this case, that the remaining lines of business require the level of assets requested by Illinois Power.

That's very similar here. ComEd has not shown why G&I plant currently requires this level of assets.

As you heard Mr. Rippie said, we're just -- I won't go there.

Therefore, if ComEd wants to reincorporate G&I plant from production into G&I for delivery services, they need to explain why it is needed and show that the remaining lines of business require the level of assets they propose.

Thus, Staff is recommending that ComEd's requested level of G&I be reduced by 304 million.

Thank you.

COMMISSIONER O'CONNELL-DIAZ: Mr. Brady, could you tell me what particular asset Staff looked at with regard to their position?

MR. BRADY: Well, Staff reviewed the documents. But Staff focused primarily, once they received this response, the response from ComEd, on their justification identifying the causes for the $633 million increase, they found that this was significant and focused most of their attention on the $405 million.

COMMISSIONER O'CONNELL-DIAZ: But what items did they identify as imprudent investments?

MR. BRADY: They did not focus on imprudent investments. They focused on the fact that the Commission previously had disallowed 405 million.

That 405 million is now been reallocated to production. We need an allocation as to if you want to move it back into distribution, that's fine, but you need to explain why. That's what ComEd did not show.

COMMISSIONER O'CONNELL-DIAZ: But wasn't there a different allocator used in that proceeding and that was specific to that proceeding, the 01-0432 case?

MR. BRADY: There was a different allocator used in that proceeding. It was a general labor allocator. But that doesn't get over the point that rates were set for customers using the $446 million, and so we still have an increase of 633 million and we need an explanation for that increase.

COMMISSIONER O'CONNELL-DIAZ: What if a general labor allocator had been used, what would the result have been in this proceeding?

MR. BRADY: In this proceeding?

COMMISSIONER O'CONNELL-DIAZ: I think there is some argument that that would, in fact, even made the numbers go higher.

MR. BRADY: ComEd did make that argument.

COMMISSIONER O'CONNELL-DIAZ: So your response to that is?

MR. BRADY: Staff did -- that would be a possibility. I do not recall the exact numbers that it might increase.

CHAIRMAN BOX: Did any of the parties bring up the fact that you should be consistent if you use one allocator in '01, I think it was, use the same one now. Was that discussed during the testimony at all?

MR. BRADY: Staff had a discussion regarding allocators. But our position was not to take a position on allocators because the difference previously in the '01 case you had three types of functions. You had distribution, transmission, and production. You removed the production, and now all you have is distribution and transmission.

And now Staff, it wasn't as significant impact or benefit from general labor allocator when having just two functions as there would have been in previous cases. And so Staff had not taken a position in this case.

COMMISSINER WRIGHT: Mr. Brady, if I understood Staff's brief on exception correctly, it's not whether -- it's not the allocator or the selection of direct versus general labor. It's more so the allocation of these assets which formally, at least a piece of, were toward production. Moving only those to distribution and transmission. It's the act of that and not necessarily the methodology or calculation that results, but the act of moving what used to be allocated to production now all toward transmission and distribution.

Did I understand Staff's argument in the briefs correctly?

MR. BRADY: Yes, that is correct.

It is, essentially, that the Commission has made a decision, and has decided on the level of allocation or the amount that is to be allocated amongst these functions.

And if they want to reallocate, they need to show why and justify that explanation.

CHAIRMAN BOX: Any other questions?

(No response.)

CHAIRMAN BOX: Thank you very much.

Mr. Robertson?

ORAL ARGUMENT

BY

MR. ROBERTSON:

Q Good morning. My name is Eric Robertson. I'm with the law firm of Leaders, Robertson and Konzen of Granite City, Illinois.

And I'm here to argue on behalf of the

Illinois Industrial Energy Consumers. I'm here with Conrad Reddick. Mr. Reddick will be arguing the issue for capital structure and I will argue the issue of general and intangible plant and A&G.

I think you heard about the history of this issue from my predecessors. And I think it's important to note that general and intangible plant is a rate based item. It is not an expense. It is not variable from year to year as a rate base item the way an expense is.

I think its also important to note that ComEd witnesses have testified in this proceeding. And with regard to allocation of these types of expenses, there appears to be a relationship between these costs and other distribution plant other than general and intangible plant. And there appears to be a relationship between administrative and general expenses. And the G&I plant houses those types of activities, administrative and general.

In either case, it is important to keep in mind this is a rate base item, not an expense item.

The accounts representing stores and tools and equipment, power-operated equipment and things of that nature seem to be intuitively related to distribution, transmission and production assets owned by utilities according to ComEd Witness Mr. Heintz at Page 14 of Exhibit 11.0.

The Commission allowed ComEd to include in its delivery service rate base in the last case $223 million of G&I assets.

In the present case and according to our presentation, the Company request it be authorized to include $719.7 million of G&I investment and rate base. This represents an increase of 222 percent.

As has been noted by my predecessor, this increase, the difference between what was authorized as just and reasonable for rate base in the last case and what's proposed for rate base in this case, has not been addressed by Commonwealth Edison in any detail except to explain the amount they requested in the last case and the amount they're requesting in this case. They don't compare it to the amount the Commission authorized in the last case.

The testimony offered in this case by Commonwealth Edison focused on individual elements of general and intangible plant. This is kind of like the forest and the trees argument. ComEd identified some trees. Staff and IIC looked at the forest. And the forest appeared to be way too large in the aggregate to us compared to what you approved in the last case and that's the basis for the adjustment from our point of view.

Under the circumstances, IIC recommended the G&I plant be increased or decreased. In proportion to the increase or decrease in distribution plant, IIC used the distribution plant because as ComEd Witness Heintz noted in revenue altercation methodologies there appears to be some relationship between these two items.

IIC's approach, as the Staff's approach, is supported by past Commission decisions, the Illinois Power case in docket 01-0432.

It is interesting to note that if you

read the description of Illinois Power's arguments in that case on the altercation of general and intangible plant, they make many of the same arguments that ComEd had made here today. They argued that no party specifically challenged any specific item of G&I plant, which is true. We did not. And the Commission did not accept that argument.

They challenged, they also noted that they no longer own generation. And they had allocated $55 million of G&I expense to the purchases of their generation, and the Commission was not persuaded by that argument either.

They also argued that the Commission had approved the transfer and its allocation of G&I under the context of Section 16-111 G proceedings, and the Commission correctly noted in those types of proceedings its jurisdiction was limited to two issues; one, can the utility continue to provide safe and reliable service. And, two, will it be able to ask for an increase under other provisions of Section 16-111 if the transfer is allowed.

The Commission did not approve, and you did not approve in any 16-111 proceeding for this company the accounting methodologies used or the allocation of costs to the unregulated affiliates.

Absent IIC's adjustment, there is a good possibility the Commission will be allowing the Company to recover G&I plant costs that were disallowed that were not determined to be just and reasonable in the last case as a rate base item.

Therefore, we strongly recommend that you allocate, as you did in the Illinois Power case, in proportion to other distribution plant, the general and intangible plant in this case.

And if you maintain the ratio established in the last case, then you will be acting in a manner consistent not only with the order in the prior ComEd case, but your order in the Illinois Power case.

Thank you.

CHAIRMAN BOX: Questions?

(No response.)

CHAIRMAN BOX: Thank you very much.

Mr. Townsend?

ORAL ARGUMENT

BY

MR. TOWNSEND:

Q Good morning. Chairman Box, Commissioners.

Chris Townsend from the law firm DLA Piper, Rudick, Grey, Cary appearing on behalf of the Coalition of Energy Suppliers. It's an ad hoc coalition of some of the largest electric suppliers both in Illinois and throughout North America.

In considering the issue of general and intangible plant, you're essentially being asked to allocate the costs of the nuts and bolts of ComEd's doing business; the buildings, the real estate, the trucks, the software. How should you allocate those costs?

Significantly regarding this issue, the coalition and IIC and Staff, we are not arguing against ComEd's right to fully recover the G&I, the general and intangible costs with a reasonable rate of return.

The Coalition seeks nothing more and

nothing less than an appropriate allocation of those costs so that the supply-related costs are recovered underneath supply-related charges, and the delivery services costs are recovered underneath delivery services charges.

As you can see, on cross-examination ComEd admitted that it agrees with this principle.

Contrary to the implication of ComEd's learned counsel, ComEd is not just a wires company. It is an integrated distribution company. That is, ComEd as an integrated distribution company provides both delivery services and supply services.

So regardless of the fact that ComEd doesn't own the generation and regardless of the fact that ComEd is going to pass through the costs of the auction that you approved, ComEd still clearly incurs supply-related costs. That's why it has a supply administration charge.

In ComEd's 2001 delivery service tariff proceeding, the Commission looked at all of the costs of the nuts and bolts, and it properly allocated those costs, saying that ComEd had over-estimated the amount that should be attributed to delivery services and instead some of those costs should be allocated to the supply services; an over-estimation by $405 million that should move from one side to the other.

In that case, the Commission noted that the direct assignment method that ComEd used there was inappropriate.

The Commission found, first, that a portion of ComEd's general and intangible plant costs, its real estate, its buildings, its trucks are used to support its supply services.

Second, it found that ComEd failed to attribute the proper amount to the supply side of the equation.

The Commission's orders was not a finding that the costs weren't incurred or that they were imprudently incurred, but that they should be allocated differently.

So in this delivery services proceeding, ComEd, again, had determine what G&I costs it should be allowed to recover in rate base;

what should be allocated to delivery services versus supply.

Surprisingly, ComEd took as its starting point, the exact allocation that ComEd had proposed in the 2001 case rather than taking the amount that the Commission had approved.

So the question is what should your starting point be for your rate base cost here. Either what you had suggested to the Commission and they rejected, or what the Commission actually said.

Staff Witness Peter Lazar appropriately took issue with this, and the Coalition entirely agrees. It is up to ComEd to demonstrate that the general and intangible plant should be recovered in its delivery services rate. There's no presumption that it is. It wasn't up to Staff to go through and demonstrate that this should be separated in a particular way. It's up to ComEd to demonstrate that it's appropriate.

COMMISSIONER O'CONNELL-DIAZ: But, Mr. Townsend, isn't it correct that once that presentation is made that any party that seeks to slice and dice whatever is put on the table should do that so the Commission can have a full feeling of whatever the Company has proposed?

MR. TOWNSEND: Certainly. Any party that's going to challenge it should provide appropriate argument.

COMMISSIONER O'CONNELL-DIAZ: And any analysis of each item that they're objecting to?

MR. TOWNSEND: I don't think a party has an obligation to come in and present affirmative evidence and go back through and try to itemize each point.

It's enough to go back to ComEd and say, We think your starting point is wrong. We think you made a fundamental error with where you started. You have to start somewhere with your analysis. And we question why it is you started with what you suggested and the Commission rejected as opposed to what the Commission actually said, which should be the allocation between these two areas.

When they questioned that, ComEd said Well, we actually incurred these costs. Well, that's an interesting point, but it doesn't explain why is it that you didn't take the number that the Commission said should be allocated on each side? What was it over here that actually belonged over there? They didn't explain why it is that the delivery services rates should increase so much.

The Commission should take the steps that ComEd CEO suggests; it should separate out the delivery services charges from the supply-related charges, separate the nuts and bolts so that the supply-related nuts and bolts are under a supply-related charge, the supply-administration charge, and the delivery services charges include only those charges and costs associated with delivery services.

Thank you.

CHAIRMAN BOX: Thank you.

I think, Mr. Rippie, you had some time remaining.

MR. RIPPIE: I'm going to respond, if I can, to just four points.

First, Staff candidly admitted, as all

the evidence shows, that even if the objectors arguments are accepted, the $304 million is production. No one contests that it is used and useful. No one contests that it is reasonable and prudent.

As Mr. Townsend says, if you agree, and I submit you shouldn't, that is still recoverable in the supply administration charge, and it would be legal error to do otherwise.

Second, we did justify our general intangible plant. We didn't start with the '01 number because the Commission didn't take any particular assets in '01 and say, This is P, this is G, this is D, this is C. You had a general allocator and took that percentage and just multiplied it across everything. So we went from the bottom up and proved it was needed.

Third, what's changed? I told you, the generation is gone, and it is simply unreasonable to assume that $304 million of those nuts and bolts are used to support generation. That is nutty.

And, lastly, consistency. The reason

the allocator was done in the last case is because there is generation to allocate GP and IP to. There isn't anymore. And that's why you said in your order that it wasn't precedential.

It is ironic that we are now being faced with a $300 million disallowance based on something in 2001 you said shouldn't be the basis of future action.

We proved our case with evidence in this record, and we are entitled to recover those assets.

Thank you.

CHAIRMAN BOX: Thank you.

Any questions from the Commission?

(No response.)

The next item is the Pension Asset.

Mr. Rippie and Carla Scarsella and Rishi Garg.

MR. RIPPIE: ComEd proved that it made an $803 million investment in the pension trust responsible for its employee's retirement. That investment was real cash. It was a cost of service and a prudent and reasonable thing for Commonwealth Edison to do.

We provided expert testimony in the record of what the policy and business reasons for doing it were. And I submit that that evidence was not contested. ComEd was legally and is legally entitled to inclusion of that real $803 million in its rate base.

First, there is no dispute that this contribution was made. It was funded by an actual contribution to the trust fund. That increased the value of the trust fund by $800-plus million and substantially increased the trust's earnings. Calling that an accounting manipulation is inconsistent with those facts. It was real money.

Secondly, unlike in the recent Nicor case and other cases where pension investments were disallowed, here the evidence is undisputed and uncontradicted that the funding for that contribution came solely from stock holders.

This is not a case where there is an argument that that that money came from customers.

Moreover, we proved that it had never been paid by customers in rates. It is a pure shareholder contribution.

Third, ComEd's financial statements, which do reflect the pension assets have been audited by Price Waterhouse Coopers and reviewed by the SEC.

Pension accounting is complex. I dreamed about it all last night.

And while we have a disagreement with Staff on accounting for pension liabilities corresponding to that contribution, that argument is ultimately irrelevant to the ratemaking issue. Even if the $803 million did result in a liability on ComEd's books, that liability would not reduce rate base because it's not the result of customers paying anything either in the beginning or through rates.

The rule is and always has been that you reduce rate base when customers pay for the asset not when shareholders pay for the asset. When shareholders pay for the asset, you earn a return on it.

Four, Staff's proposal would provide

for recovery of only about $12 million annually related to pension expense. You don't have to have a calculator to understand that a$12 million return is never going to pay for the $800 million investment.

Now, ComEd also proved why the pension asset was made, and it was proven to be prudent and reasonable. Its employees, ComEd's employees, are clearly necessary for our provision and service, and treating them fairly and ensuring that their retirement obligations are met is not only prudent, but it's the best thing for them, for the customers, and it's the right state policy.

Indeed, Staff acknowledged in its POE, Page 18, that it has never claimed that the contribution to the pension fund was not prudent.

Moreover, prior to the contribution, ComEd's pension benefit obligations were approximately 72 percent funded, and that was at the low end of the group of comparable companies identified by our actuaries, and that raised concern in ComEd and raised concern at Exelon.

As a result, a contribution was made

and not an overreacting contribution, but one that appropriately funded the pension trust and put us in line with our peers. That was prudent. It was reasonable, and it resulted in a real asset that we are entitled to recover.

I will reserve my remaining minute and 15.

Thank you.

CHAIRMAN BOX: Thank you.

Ms. Scarsella?

MS. SCARSELLA: Mr. Chairman, Commissioners, my name is Carla Scarsella. I'm representing Staff in this proceeding.

Staff strongly recommends that ComEd's request to include pension asset and rate base be denied for a very simple reason; a pension asset does not exist.

When a company determines whether it has a net pension asset or a net pension liability, it's a result of a straightforward equation; pension contributions, less the pension obligation.

If a pension obligation is greater

than the pension contributions, then the Company will have a net liability. So one minus two is the negative one and there is a net liability.

However, if pension obligations are greater -- let me restate that.

However, if pension contributions are greater than the pension obligation, then the Company will have a net pension asset.

Based on the facts in the record in this proceeding, the equation for ComEd equals zero that is because pension contributions equal the pension obligation.

As the record indicates, the pension is fully funded. It is not under-funded, thereby creating a net pension liability. Nor is it over funded, which would create a net pension asset.

However, ComEd is reflecting a pension asset on its books. The item which is reflected as an asset on ComEd's books is only the pension contribution side of the equation that I just spoke of.

Exelon, which chose to make a pension

contribution on behalf of ComEd also chose how to reflect the pension contributions in total, how they would be reflected on ComEd's books.

Namely, Exelon pushed down the pension contributions on ComEd's books, but it didn't push down the corresponding pension obligation onto ComEd's books.

With only the pension contribution on ComEd's books, there is an appearance of a net pension asset when one does not exist.

Now, does Staff dispute that the source of the pension contribution on ComEd's books is due in great part to shareholder supply funds? Absolutely not.

However, the question of whether the funds are shareholder supplied or ratepayer supplied, it's premature.

The question that first must be answered is whether a pension asset exists. The answer to that question is no.

If in the next rate case a net pension asset exists, meaning the pension contributions exceeds the pension obligation, then it is at that time the analysis must occur as to who provided the source of funds, shareholders, ratepayers or both.

Finally, much has been made of ComEd's legal requirement to fully fund its pension obligation. Staff does not dispute that ComEd must satisfy all its legal obligations, including its legal obligation to fully fund its pension obligation.

However, there simply was no legal or other obligation to make one lump-sum contribution to fully fund the pension plan in March of 2005.

While a pension plan must ultimately be funded to meet its obligations, pension plans are allowed to be fully funded over time in order to account for actuarial losses.

Thus, the fact that the pension plan is under funded does not accelerate the Company's legal requirement to fully fund the plan.

Therefore, based upon the record, there is no net pension asset to be included in rate base.

COMMISSIONER FORD: Ms. Scarsella, isn't it standard practice for ComEd to compensate ratepayers for the contributions to the pension plan?

MS. SCARSELLA: Yes, it is. They made the contribution, why? Because of the obligation. And That's why it's important to compare the two together. And Staff would not, if there was a net pension asset on ComEd's books, meaning that the contributions exceeded the associated obligation, then we'd have an asset to discuss.

COMMISSIONER O'CONNELL-DIAZ: But it was 72 percent funded prior to this infusion of money?

MS. SCARSELLA: Right.

COMMISSIONER O'CONNELL-DIAZ: So they brought it up to, I think it was 101 percent actually.

MS. SCARSELLA: Right.

The funding level does not impact -- the equation is pension contributions less pension obligations. If pension contributions is greater, then that's the amount that should be reflected as in that asset.

But what's reflective as an asset in

this proceeding is the $853 million not reflective of the corresponding obligations that it's connected to. The obligation is up on Exelon's books.

COMMISSIONER FORD: How has this issue been decided in the last five rate cases?

MS. SCARSELLA: As far as I know, I'm not sure there was a valid pension asset in the previous case. And Staff did not cite to the Nicor or GTE cases because those did involve valid pension assets.

COMMISSIONER FORD: But they were also commingled?

MS. SCARSELLA: Well, first we need to decide whether there is a valid pension asset, and then we get to the question of who provided the funds. We don't even get to that question here because there is no valid pension asset.

COMMISSIONER O'CONNELL-DIAZ: Ms. Scarsella, I'm going to just read a passage from your brief, if you would indulge me. In your brief you state, quote:

"ComEd's proposed ratemaking treatment, of its discretionary contribution is detrimental to ratepayers because it increases the revenue requirement by $27.9 million annually.

"The only impact on the revenue requirement absent the contribution would have been an increase of pension expense of 8.6 million rather than the adjustments proposed by the Company, which increase the revenue requirement by a total of 27.9 million."

Is that really true and isn't the 8.6 million increase an increase compared to the previous rate case and not an increase compared to the situation where the pension contribution did not take place?

MS. SCARSELLA: All right. First, I would like to break down the 27.9 million. That is reflective of two parts. First it's the rate of return on the pension asset, which increases the revenue requirement by 49.5 million.

Now, the effect of the contribution also reduced the amount of the pension expense which is being included as an operating expense, so we absolutely have to take that into account.

So the pension expense, which is included in operating expenses has been reduced by 21.6 million.  So you have to take both parts together, and that is what results in the $27.9 million.

Now the passage that you read from is Staff's position that if Exelon had decided not to make this contribution, what would the increase have been?  And the 8.6 million is the result -- is based upon the actuarial study, which showed the pension expense for 2005 without having had the infusion from ComEd would have been $41.9 million pension expense. That was compared to 33.3 million expense for 2004, and that's where the 8.6 million comes from.

COMMISSIONER O'CONNELL-DIAZ:  You also state that the Company will recover the costs associated with its pension plan under Staff's proposal; namely, it will recover the periodic costs of the pension plan as determined by the Company's actuary through pension expense included in the revenue requirement. I think you clarified that a little bit in your prior answer.

Could you explain a little bit more clearly so that I can understand that a little bit better.

MS. SCARSELLA: Sure.

Normally I think ComEd -- we are going to set aside the infusion.

In a normal situation, the amount of pension expense included in operating expenses in a rate case is based on the actuarial report. And it is Staff's position that that's the number that should be included here as well. I'm not sure if I answered your question or not.

COMMISSIONER O'CONNELL-DIAZ: If the Commission wanted to allow ComEd to make Exelon whole, so to speak, without allowing the pension contribution to go into rate base and without following the proposal of the AG, what options does the Commission have with regard to this item?

MS. SCARSELLA: It's not my understanding that Exelon is seeking to be made whole. There is no intercompany payable on ComEd's books representing the $803 million distribution that Exelon made to the pension fund.

COMMISSIONER O'CONNELL-DIAZ: Obviously, there are funds that have been invested that come from the shareholders and through bond holders of Exelon.

MS. SCARSELLA: Well, I think the most appropriate time for ComEd to render a return on the asset is when one actually exists.

Right now the pension obligation is fully-funded. It is not over-funded. And at that time, then it would be appropriate to include an asset in rate base upon which the Company could earn a return if it was determined.

You know, obviously, we have a large infusion of money here that Exelon was due to the infusion of cash from ComEd -- or from Exelon.

COMMISSIONER LIEBERMAN: Can I ask a more general question? And, Mr. Rippie, when you get up back on the stand perhaps you could address this as well.

MR. RIPPIE: Happy to.

COMMISSIONER LIEBERMAN: Do I understand this correctly that Exelon borrowed this money at 4.89

percent, whatever it was, and then put it in the pension as an equity asset from Exelon to ComEd so that it's now considered an equity?

MS. SCARSELLA: It was treated as an equity contribution, yes.

COMMISSIONER LIEBERMAN: So do I understand this right that the equity, that's where the increase in revenue requirement comes from because there is an equity payment back to Exelon?

MS. SCARSELLA: No, it's the way -- forgive me if I don't have the accounting entries correct.

COMMISSIONER LIEBERMAN: It's really okay.

MS. SCARSELLA: Thank you.

Unlike Mr. Rippie, I don't dream about pensions, maybe I should start.

(Laughter.)

What happens, basically, is that an asset is debited for the amount of the pension contribution, and then the equity side was credited, and that's what balances the balance sheet. And what's being sought is a return on this asset that's currently on ComEd's balance sheet.

COMMISSIONER LIEBERMAN:  Right.

But Exelon raised the money at 5 percent and they're going to get 11 percent back?

MS. SCARSELLA:  Whatever the rate of return is.

COMMISSIONER LIEBERMAN:  Whatever it turns out to be?

MS. SCARSELLA:  Right.

COMMISSIONER O'CONNELL-DIAZ:  And for that investment to be made, that would be made like any other investment where those making the investment would expect a return on their money based on the risks and all the other attending factors in a financial situation like that?

MS. SCARSELLA:  Well, it's a little different here because here it's a funding of an obligation. It's not an asset like a truck that you can point to. And the obligation itself varies based on the actuarial projections.  So it's not quite the same.

But before -- it is Staff's position before an asset can be included in rate base, there should be a true asset on the books whereby the amount of the contributions exceed the obligation, and that's just not the situation here.

COMMISSIONER O'CONNELL-DIAZ: Thank you.

CHAIRMAN BOX: Thank you very much.

Rishi Garg from the Attorney General's office.

MR. GARG: Good morning, Chairman and Commissioners. My name is Rishi Garg. I'm here from the office of the Illinois Attorney General on behalf of the people of the State of Illinois.

If the Commission allows ComEd to recover the costs of funding the pension contribution, it should only allow ComEd to recover the actual costs of funding the pension contribution; no more and no less.

To allow ComEd's proposed treatment of the pension contribution would be to allow a windfall of $70 million to Exelon shareholders paid by the ratepayers. This $70 million figure is based on the fact that debt is cheaper than equity.

The return on the pension contribution calculated using ComEd's requested equity return of approximately 11 percent equals a $97 million return.

The return on the pension contribution calculated using the actual debt rate of 5.01 percent equals a $27 million return, a difference of $70 million.

It is undisputed that the entire pension contribution was funded at the Exelon level by debt. However, by treating the pension contribution as equity on the books of ComEd, Exelon saw that it could make $70 million more for its shareholders.

The Commission must deny ComEd this miracle of modern financial outpour in treating what is debt to Exelon as equity on the books of ComEd.

As background, by treating the pension contribution as equity, ComEd improperly inflates the revenue requirement two ways. First by including the pension contribution in rate base, the return requirement is correspondingly increased.

Second, by treating the pension contribution as equity on its books, ComEd has increased the percentage of common equity in the capital structure, which increases both its rate of return and the return requirement.

To authorize its inflated return requirement would be to grant the Company $70 million in excess of the actual cost to fund the contribution.  These excess revenues would go to Exelon shareholders at the expense of ratepayers.

The people have made the following argument on the record, allowing an equity return for the pension contribution would result in a windfall for Exelon shareholders.

The Company has had numerous opportunities to review our argument and has not done so.  We made this argument in our direct testimony, rebuttal testimony, initial reply briefs, and briefs on exception.

The bottom line is that the entire contribution of Exelon was funded by debt.  To avoid a $70 million windfall to Exelon shareholders at the expense of ratepayers regardless of how ComEd treated the pension contribution on its books, ComEd should earn a debt return on the pension contribution reflecting the actual cost of financing the pension contribution.

The proposed order allows an equity return on the pension contribution and the Commission should correct this mistake.

Thank you.

COMMISSIONER LIEBERMAN: Quick question: Has AG taken a position on the Staff's that there is no asset to begin with?

MR. GARG: The AG has not taken any independent position on that issue.

COMMISSIONER LIEBERMAN: Okay.

CHAIRMAN BOX: Thank you.

Mr. Rippie, I think you had some time remaining.

MR. RIPPIE: I would like to respond to three points.

First, the notion that there is not, in fact, an investment being made to ComEd in its trust fund that needs to be compensated is obviously incorrect.

Let me give you an analogy because pension accounting is hard. Let's talk about poles.

Let's say ComEd has an obligation to build poles because it does, and it funds that obligation by getting money from shareholders and putting it in the trust fund that pay for poles.  There is an asset and a liability created, and an accountant would tell you that they balance.

But you don't say because ComEd has an obligation to its investor or its lender by virtue of receiving that money that is equal to the money that it invested in its system that they washed, and there is no rate base.

If we put in $803 million and that reduced pension expense by $30 million every year, is Staff's position really that we should put $803 million into the system, save customers $30 million, and we should get nothing, no return, either of or on that investment?

Secondly, is it also Staff's position that we should just continue to collect this every year as we need the pension expense?

Employees expect to look to a pension trust and see that that trust is funded.  They expect to see money there to satisfy the future obligations that they're going to incur as they retire, and that's what our investment did.

I know the stop button is up, but I wanted to answer Commissioner Lieberman's question, and I will do it with another analogy.

The other thing I dream about is opening a restaurant. So let's say I open a restaurant, and you know that's a fairly risky operation, and I come to you and ask you to loan me $100,000 to fund my restaurant. And you say, Great, I can borrow it on my home equity line at 4.97 percent. I doubt very much that you would think that was a good proposition if I told you, Fantastic, I will pay you the 4.97 percent that it costs you to get the money to invest in my restaurant and the reason you --

COMMISSIONER LIEBERMAN: But when you're opening a restaurant, you can ask all of us for an investment?

MR. RIPPIE: Right.

COMMISSIONER LIEBERMAN: In this case it was simply a decision made by the sole equity holder to invest this money.

MR. RIPPIE: And by ComEd, Mr. Commissioner, both.

And the reason it was done that way, there is evidence in the record on the reason why, the reason why is because ComEd didn't have the borrowing capability. ComEd couldn't have borrowed that money itself without impacting its debt rating and its ability to fund its other obligations in the record uncontested. So, instead, got it as an equity contribution.

I understand that the Attorney General's office would take the position that they like to look at as a debt. But it was an equity contribution. There is no loan. There is no note. There is nothing that if ComEd every got downgraded or, God forbid, ended up in a bankruptcy proceeding that Exelon can say, Hey, this is really a loan. We really took the risks of a lender. They didn't. That $803 million was contributed into equity because that was the only way that ComEd could get it.

COMMISSIONER FORD: Being a pensioner, I'm glad that you all decided to fund that because with the stress most companies are having with pension plans, especially since the Enron debacle on Anderson, we are certainly wanting to know that. I certainly hope the State will eventually do 100 percent pension funding.

I'm certainly aware of pension assets coming from the Chicago Public Schools and the situation we are in now with pension funding.

My analogy, Bob, would have been if I wanted to buy a car and I borrowed from my mother instead of a bank, I would still have to pay it back, but not as much equity.

COMMISSIONER O'CONNELL-DIAZ: Mr. Rippie, the tail end of your response to Mr. Lieberman's question when you were talking about the fact that ComEd, in order to fund this type of a transaction on its own, did not have the financial wherewithal to do that.

If they had been able to go out and, say, borrow the money in some other manner, that would have had an effect on its credit rating, as well as there would have been more charges accrued to ratepayers, correct?

MR. RIPPIE: It would have changed the Company's credit standing. It would have changed its cost of debt. It would have changed its cost of equity. It would have changed its capital structure.

The fact is there is rather extensive evidence talking about why we actually reduced the level of debt in the capital structure, and why that has benefited both ComEd and customers.

To turn around and borrow $803 million for something other than operating expenses is something that didn't make sense. And, again, there is really no dispute about that in the record.

COMMISSIONER O'CONNELL-DIAZ: Thank you.

CHAIRMAN BOX: Anymore questions from this panel on this issue?

(No response.)

CHAIRMAN BOX: The next issue is the Administrative and General Expenses Functionalization, A&G.

We have four presenters. Once again,

Mr. Rippie, Mr. Dale Robertson and Mr. Christopher Townsend.

MR. RIPPIE: ComEd incurred a net $255.7 million in net recoverable jurisdictional test year A&G costs. That's the last time I will use a word that long.

We showed them a reasonable amount. And we proved that with eight testimonies from three witnesses and numerous supporting schedules and work papers and a truckload of Part 285 documents.

ComEd proved that it correctly functionalized these expenses as well, and no party submitted an exception claiming otherwise.

IIC and Staff nonetheless asked did this allow between 85 and $105 million of actual AG expenses; this mass disallowance is not supported by evidence that ComEd's actual A&G expenses were wildly inaccurate that they were imprudent or that they were dysfunctionlized.

Indeed, IIC contested no specific expenses, and instead claimed the 2004 AG expense should be capped at the 2000 levels.

A&G, as was explained by Mr. Robertson, is an expense that is incurred anew each year.  It need not, and should not, be the same in 2004 as it was in 2000.  ComEd served more load in 2004.  It served more customers in 2004.  There was an inflation during that period of time, and A&G activities include many, as graphically illustrated on the board, with rapidly rising costs, such as medical expenses.

On top of that, there were entirely new A&G expenses in 2004 that weren't around in 2000; such notably as post-911 security and Sarbanes/Ox compliance.

These arguments then in short ask you to ignore proven prudent costs in favor of assertions that we should have the same costs in 2004 as four years earlier when we were an unrestructured company.  Legally and factually that's wrong, and the Commission has not capped expenses on that basis in the past.

In any event, ComEd's AG expenses in the test year are not even inferentially suspect.

First, our total 2000 A&G expenses are 123 million or 26 percent less than they were in 2000. There is no response from Staff or IIC witnesses.

Second, in 2000 ComEd owned generation. We have spent a lot of time talking about that. If we back out the 2000 A&G expenses that were related to generation, then ComEd's remaining non-generation A&G expenses increased by only by 9.4 percent from 2000 to 2004. That's less than inflation and compares very favorably to the 31 percent average increase of the 178 electric utilities that file for performance.

Third, A&G expense functionalize to distribution and customers function increased only 14.2 percent, also hardly a strange increase.

The implication that there, nonetheless, is somehow 84 to $105 million of jurisdictional A&G expenses that actually must either support transmission, nonexistent generation or nothing simply is not supported by the evidence.

That's not a tiny amount; 84 to $105 million would be noticeable. Yet there is not a shred of evidence that any such expense of that magnitude, let alone $83 million of those allegations exist.

In fact, what accounts for the apparent differences is that there were specific disallowances in the 2000 case. Disallowances specific to particular expenses that don't apply in this case. That portion of the difference should be viewed as a reason why what we presented in this case is valid, not a reason to simply re-impose those disallowances in this case.

Two final points: First, the fact that A&G expense should mark and lock step with distribution O&M is incorrect. They're largely driven by independent factors. But in any event, your books contain charts that show our ratios, the ratios of ComEd which are very reasonable compared to the peers.

Finally, the notion that there's something wrong with our allocation of shared corporate services is also incorrect. Those are allocated through a neutral and objective SEC formula, and the disallowance proposed by the CCC would be contrary to that that formula in federal law.

Thank you.

CHAIRMAN BOX: Thank you.

Mr. Brady?

MR. RIPPIE: And I reserve the 30 seconds.

MR. BRADY: Good morning.

As with G&I, ComEd has the obligation to explain why it needs yet another marked increase in expenses, specifically A&G expenses, from its previous rate case.

This table is probably uneffectual since it's so bright here. My affinity for green has kind of gotten the best of me. But this table, hopefully it will brighten up a little bit.

ComEd has had two previous delivery service rate cases up to this point. In its first rate case, 99-0117, the Commission had approved a general and A&G expense of $125 million approximately.

And in its subsequent rate case, three

and a half years late, the Commission approved a 42 percent increase in the A&G expenses.

And now three and a half years later, we are seeing a subsequent 45 percent increase in A&G expenses. And ComEd has the obligation to provide firm reasons or facts to justify its $79 million increase.

They have handed out, and they had their exhibits and they have a diagram that showed and identified a few of the things that they focused on as what caused their increase.

They noted, we've got post-911 security increases, we've got costs, we have got cost of compliance with Sarbanes Oxley, we have inflation, going up, healthcare costs, wages.

But they don't -- if you look at the testimony provided by Mr. Hill, for example, in his rebuttal testimony, they just say these have gone up. They haven't really tied them down to a test year.

For example, with the security costs, post-911 security costs and Sarbanes/Oxley. They provided no estimate of the magnitude of these costs.

Regarding the inflation, they have never -- they haven't really identified exactly what impact the inflation -- where inflation has impacted them on their expenses.

Regarding healthcare, the support for their healthcare increase is strictly they refer to a diagram on Schedule 14 of Mr. Hill's rebuttal testimony that shows the average increases of healthcare costs nationwide. But they doesn't explain how their actual increases for their test year actually relate to these average increases nationwide.

They also claim that wages have been going up 3 percent per year; however, as is also not easily readable in this diagram, their direct expenses, their direct payroll between 2000 and 2004 have actually gone down. Their wages haven't gone up, where the payroll distributions have gone down.

COMMISSIONER O'CONNELL-DIAZ: Payroll versus wages would be two different numbers.

MR. BRADY: Yes. That's why I said payroll distribution.

COMMISSIONER O'CONNELL-DIAZ: And do you include an inflation factor in your analysis, Staff's analysis?

MR. BRADY: In Staff's analysis of A&G?

We strictly looked at the rationale that ComEd had provided for their --

COMMISSIONER O'CONNELL-DIAZ: So you don't provide inflation factors? So what you are suggesting is your costs are all the same as they were in 2000 for those items that were in the 01-0423 case?

MR. BRADY: We are recommending that the dollar amount is the same.

However, in this case the difference is we are using a general -- ComEd is proposing a general labor allocator; whereas, in the previous case, a direct assignment has been approved.

The difference in the two cases is about 50 -- let me back up.

The interim order for 04-0123 had approved -- had used a general labor allocator. Then in the final order, it approved a direct assignment a --

COMMISSIONER O'CONNELL-DIAZ: My question to you was: The cost in that docket for similar items that are before the Commission in this docket, you're suggesting those costs would stay the same?

MR. BRADY: What I'm suggesting is that the change in the labor allocator allows for the increase in A&G costs, and that would be reflective in comparing the interim order in 01-0423 to the final order.

So then just to summarize -- I see my time is up -- in Staff's view, ComEd has failed to provide firm relationships back to its test year that show the basis or support the basis for its large increase in A&G.

CHAIRMAN BOX: If I could clarify something, you are saying the Sarbanes, actually the post-911 security that there were increases. They just didn't substantiate them in any testimony or evidence. Is that your position?

MR. BRADY: That was Staff Witness Lazar's estimate. They provide no estimate of the magnitude of those costs.

CHAIRMAN BOX: If that could be found somewhere in the record, you would admit that those should be included?

MR. BRADY: Sure. If it's somewhere in the record. But like I said, Mr. Lazar did not see those or find those.

CHAIRMAN BOX: Questions?

COMMISSIONER LIEBERMAN: Presumably, Mr. Rippie --

CHAIRMAN BOX: I was going to ask him when he comes back.

COMMISSIONER LIEBERMAN: Okay.

This apparently -- this is an empirical question. Is there somewhere in the record we can find the substantiation.

MR. RIPPIE: Yes. I would like to give you a fuller answer than that.

COMMISSIONER LIEBERMAN: I thought you knew everything.

MR. RIPPIE: Sadly, no. I can do it now or in the other two arguments that may touch on the same question.

COMMISSIONER LIEBERMAN: We can wait.

CHAIRMAN BOX: Commissioner O'Connell-Diaz?

COMMISSIONER O'CONNELL-DIAZ: Mr. Brady, ComEd makes the assertion that their A&G expenses have only increased 9.4 percent, yet you state their overall proposal is 85 percent greater than the total delivery services A&G expenses included in the 2000 test year.

Could you explain the disparity of those numbers?

MR. BRADY: Yes, I believe the --

COMMISSIONER O'CONNELL-DIAZ: I think it's Mr. Hill that testifies about the 9.4, and it's Dr. Lazar that comments on the 55 percent, so I'm kind of wondering which one is it?

MR. BRADY: Right.

I believe the comparison that was used was the information for 2004 had included production. The information for 2000 included the production, but 2004 did not.

COMMISSIONER O'CONNELL-DIAZ: So the 55

includes production and the 9.4.

MR. BRADY:  Staff's 55 percent?

COMMISSIONER O'CONNELL-DIAZ:  Yeah.

MR. BRADY:  Staff's 55 percent is a comparison of what ComEd is proposing now in comparison of what was approved in the previous DST rate case.

COMMISSIONER O'CONNELL-DIAZ:  You keep talking about the previous DST.

This case is a different case, so I think the analysis should be on what is presented for our review in this case which are different.

MR. BRADY:  That's true.  But it does give you a perspective of the overall impact that's going to be seen on the ratepayers.

COMMISSIONER FORD:  Also, no party proposed any other method and showed no valid reason to reject the numbers for A&G.

Are you the only one?

MR. BRADY:  I believe IIEC commented on this as well.

COMMISSIONER FORD:  And you said, just going back to you said previous year one was 125 percent increase I think, then 42 percent in the previous case, and 45 percent now. And to think that in my pension I get 3 percent each year, I was just saying inflation would give them 3 percent since they went from 42 to 45. I didn't see -- I mean, I just didn't see your reasoning for disallowing it and saying it was way overboard.

MR. BRADY: Basically, they had four or five large categories; wages, inflation, additional costs that were related to like Sarbanes Oxley compliance or post-911 security, but they didn't provide the detailed information that tied back to the test year.

COMMISSIONER O'CONNELL-DIAZ: What was wanting in the detailed information that Staff would have liked to have seen?

COMMISSINER WRIGHT: Thank you, Commissioner.

I was waiting to ask in comparison to the previous rate case or cases what evidence or measurements or metrics or indicators were not present at this rate case that would give you that detail that you are looking for to back up these numbers?

MR. BRADY: I think I -- well, for example, going back to the security costs and Sarbanes Oxley, I think it would have been hard dollars showing those dollar amounts. Mr. Rippie has them. The inflation.

COMMISSIONER O'CONNELL-DIAZ: Either they're in the record or they're not in the record.

MR. BRADY: Right. Correct.

COMMISSIONER O'CONNELL: Is it Staff's position they're not in the record, so therefore, there was not an ability to verify those costs?

MR. BRADY: That is my understanding of Staff's review. As well as healthcare, the healthcare.

COMMISSINER WRIGHT: Certainly before this body goes before a legislative body and asks for an appropriation of X dollars you have to provide detail; pay plans, commodities, and a host of other funding lines with things that clearly indicate the level whether its historic or projected in metrics and the detail to substantiate the request.

I suspect that's the same frame work we are looking at from this utility who is asking for ratepayers to fund these items in their

Administrative and General.

If the detail is not in the record, then it is very difficult for this body to determine how much ratepayers should be paying.

So I think what we're asking for is where is the detail and where is it in the record, and so that we can make an intelligent decision on what this company is asking the ratepayers to fund?

CHAIRMAN BOX: If I could just clarify something from Commissioner Ford, it was my understanding you said 125 million two rate cases ago?

COMMISSIONER O'CONNELL-DIAZ: 9117.

MR. BRADY: Yes.

CHAIRMAN BOX: Then it was an increase of 42 percent.

MR. BRADY: Right, up to about 126 million.

CHAIRMAN BOX: And this one is 4 percent on top of that?

MR. BRADY: Yes.

Chairman Box: Further questions?

(No response.)

CHAIRMAN BOX: Mr. Robertson?

MR. ROBERTSON: Hopefully my argument will be like the old man's dance; short and sweet.

A&G is basically overhead expense. It relates to corporate activities, such as salaries of corporate officers, pension benefits, injuries and damages, office supplies, and miscellaneous expense.

ComEd originally proposed in this case a level of overhead expense that was 55 percent greater than the level the Commission had determined was just and reasonable for overhead in ComEd's last case.

If you will see the handout that I provided you which is table one from Mr. Chaflant's direct testimony in this case it shows the level of AG approved in the last case, the test year proposed level of A&G and direct case, the difference between the two and the calculation of the percentage.

Also, in the last case the Commission approved a level of A&G relative to O&M other than A&G that represented 35.8 cents of every dollar of O&M expense.

In this case at least in the direct presentation of the Company, the Company made a proposal that would increase that to 62.3 -- I'm sorry -- 63.2 cents of overhead for every dollar of O&M.

This is what, at least from our position, we suggest shows that the Company's request is unreasonable when looked at in the aggregate.

ComEd did not explain the substantial increase in overhead except to the extent that it compared what it had requested in the last case to what it was requesting in this case.

So, again, we have a starting point issue, what is the appropriate starting point for comparison. And ComEd should have used, in our opinion, what was authorized in the last case and demonstrate why the O&M or A&G should be increased above that level by 65 percent.

ComEd did show, as Mr. Rippie said, taken together A&G and O&M, other than A&G had declined. But I think when you look at it, you have to pay an additional $100 million in A&G in order to save $60 million in 0&M. That does not appear to be an economic fray.

In addition, so as a result to beginning looking at the forest instead of the trees, we took the position that you should maintain the relationship between A&G and O&M other than A&G that you established in the last case by proportionally increasing or decreasing A&G in relation to the amount of O&M other than A&G that you ultimately approve in this case.

COMMISSIONER O'CONNELL-DIAZ: Mr. Robertson, I don't mean to interrupt, but are you suggesting that the Commission in this proceeding and future proceedings when we are asked to look at this issue that we look back in time at other cases and do some sort of an averaging or?

MR. ROBERTSON: No. I'm saying in the absence of a good explanation for this substantial increase in A&G relative to what you determine to be just and reasonable in the last case, you should adopt this kind of methodology, which is exactly what you did in the Illinois Power case which we already discussed today.

And, again, if you look at the explanation, and you're going to have to look at both the general and intangible plant section and the A&G section of those orders in order to get a good description because the way the order was drafted some of the arguments that relate in the A&G are stated in the general intangible section.

COMMISSIONER O'CONNELL-DIAZ: Wouldn't there have been different proofs provided in that case versus --

MR. ROBERTSON: The proof that was provided in that case, at least from our point of view, is the proof provided this case. And that is when you looked at Illinois Power's total A&G expense, it appeared to be a substantial increase over what was authorized in the last case.

So from our point of view, the proof that we have offered is that we made that same demonstration here. It then becomes -- the burden of proof then shifts back to Commonwealth Edison to explain that difference.

The assumption that they're entitled to this stuff which this -- presumption they're entitled to it is defeated by the idea that other parties have come forward with evidence to show that there appears to be an unreasonable difference, as Mr. Townsend argued --

COMMISSIONER O'CONNELL-DIAZ: What is the evidence that the other parties have come forward with?

MR. ROBERTSON: Mr. Chaflant's evidence compares what was authorized in the last case in this case. He also explains that in his opinion, he cites the witnesses for ComEd as well, that there is a relationship, a proportional relationship between A&G and O&M that you would expect that A&G and O&M would be headed in the same direction since A&G supports O&M activities.

However, in this case, the O&M expense has gone down 12 percent and the A&G has gone up 55 percent. So that on its face suggests that what the Company has requested is unreasonable, and that would be the basis for our adjustments.

CHAIRMAN BOX: Once again you're saying in the presence -- with lack of evidence you go back to the proportion argument?

MR. ROBERTSON: Yes, in essence.

And the evidence that we're talking about is not just any evidence. The evidence that we're talking about is comparison of what you determine to be just and reasonable in the last case, and what the Company is requesting in this case, not what the Company requested in the last case compared to what the Company is requesting in this case, which is the reason by the way, Commissioner, for the difference between the 55 percent and the Company's calculation of 9 percent because the Company went back and said, Oh, this is what we asked for in the last case. This is what we are asking for in this case. There is only a 9 percent difference.

But what the Staff and IIC did was go back and look at what you determined to be just and reasonable in the last case and compared it to the request in this case. That's the reason for the 55 percent difference.

So in the absence of any other questions, I'll sit down.

CHAIRMAN BOX: We have one more presenter. Then I'm sure we will have questions for the group.

We will take a break after this particular panel.

COMMISSINER WRIGHT: Chairman, and those that are coming up, if you can speak a little louder in the microphone. I'm really straining to hear you except for the next presenter that I'm sure even our friends in Kentucky can hear. But for the rest of you, you're going to have to speak up because I'm having a hard time capturing everything.

MR. TOWNSEND: Chairman Box and Commissioners, the Coalition's position with regards to the administrative and general expenses is very similar to the position explained earlier with regard to the general and intangible plant.

From the Coalition's perspective the issue is the same, as with the G&I, the general and intangible plant, the Coalition doesn't take issue with ComEd's ability to recover its expenses.

ComEd's proposal which is endorsed in the proposed order would result, however, in ComEd improperly recovering supply-related expenses through its delivery services charges.

Just as before, the Commission should require that ComEd's supply related expenses are recovered through its supply charges, so that collections for these expenses comes only from the customers taking supply service from ComEd.

Again, keeping in line with the principle that ComEd has endorsed.

This time, as Mr. Robertson noted, instead of looking at the big nuts and bolts of the buildings, of the property, instead you're looking at the costs that ComEd has included in its general delivery services expenses.  This includes the things like salaries, the legal and accounting fees, office supplies.  I guess if you will we're talking about the smaller nuts and bolts this time as opposed to the large nuts and bolts.

Let me explain two examples, give you two examples of where it is.  It's pretty clear that

ComEd's position is unreasonable.

First ComEd suggests that all expenses associated with operating its call center should be allocated to the delivery services function.

ComEd's call center operations are partially devoted to answering supply-related questions, as well as answering delivery service related questions. People call up and ask about supply options that they have, they ask for changes in their supply service, and they ask for a question about their supply-related billing. They call up the call center.

The Coalition suggests that ComEd should properly estimate the costs associated with the supply side and the delivery side. ComEd refused to offer up that type of estimate.

Instead, ComEd says simply because they have the obligation to offer supply all of the call center operations should be paid for by all customers.

The logic of this argument would allow ComEd to pass through all of its supply costs including the power that it procures through its auction through its delivery service charges, right.

ComEd has the obligation to offer up that supply, and so ComEd should be able to recover these charges through its delivery service.

To borrow a phrase from counsel from ComEd that's nutty.

Second, ComEd -- so that's one example. The call center certainly should be split apart. There are some costs associated with supply. ComEd has attributed zero dollars.

Second, ComEd suggests that all of the costs associated with its procurement case, the auction case that you voted on in January of this year, should be recovered through delivery services charges.

The costs associated with an auction case that determined how ComEd is going to acquire its supply for customers who take supply from ComEd.

Staff properly observed that these supply-related A&G expenses should be recovered through ComEd supply administration charge.

Now these expenses didn't just cover the legal fees associated with the proceedings, but they also included hiring an auction manager, the auction managers staff, the auction management expenses, and an auction advisor.

ComEd believes that all of these expenses should be paid for in its delivery charges because all customers are eligible for one of their BES tariff services. So ComEd believes that based on eligibility, all of these costs should be attributed to all customers rather than looking at the cost causation.

Coalition agrees with the Staff in saying that if ComEd is going to incur costs associated with arranging for its supply that those are appropriately attributed to the supply expenses rather than to the delivery services charges.

The Coalition respectfully asks the Commission to consider the allocation of these expenses and carefully determine which expenses should be allocated to the delivery services side and which expenses are supply related and should be recovered through the supply administration charge. Thank you.

CHAIRMAN BOX:  Mr. Rippie, you probably have a few things you want to respond to.

MR. RIPPIE:  I think there is four.

First, with respect to the comparison I will read the citation because I'm going to refer to the page a lot, and if you wish to pull it, it's ComEd Exhibit 19 schedule 15-Page 1 of 1.

First, with respect to the comparison of past and present A&G, the reason why the 2 percentages are different are not quite what I think Mr. Robertson may have left the impression.

We -- there were specific disallowances in the prior case, specific charges that on the basis of that record were found not to be properly included in the last case.  That is not the case in this case.

So when you go back and look at the balances on our books, no one has challenged specific A&G expenses in this case unlike in the last case. No one has said there is a category of A&G expenses out there, for example, health expense your insurance was too expensive. It should be disallowed to 250 million that happened. That sort of thing happened in the last case. It didn't happen here. We did an apples to apples comparison that excluded that. It's in this chart. And the percentage increase that you will see at the bottom it's about 14.2 percent. Inflation alone was 9.7 in that.

Plus the record shows that a whole bunch of things that used to be in distribution O&M got moved into A&G as part of the provision of shared services. For example, I think the number is like 400 employees, that resulted in a net, and I disagree with Mr. Robertson again here, a net benefit to customers of $66 million, summing the O&M effect and A&G effect.

Now, how much did we break it down? Again, please take a look at the schedule. It's broken down by individual ICC accounts. Sometimes the accounts don't always have the best titles.

So our healthcare and related costs are in the lines entitled, employees pensions and benefits 926000 and the BSC and related costs are in outside services employed. It shows the increases and decreases by account and sums them up.

I hope you like that level of detail. It's the level of detail that's in the record. You can't always go behind when a vendor supplies you a product and say, now of that how much of it was actually your employees. So this is the evidence that's available.

Now, there was a discussion about ratios between A&G and other O&M. We showed our ratios were reasonable compared to other companies, but moreover we explained why the ratio changed. And the principle reason is because things that used to be in distribution O&M got moved to A&G, and that helped customers. It helped them a lot.

Now, I want to very briefly, because I know I'm on the clock, talk about the call center and the procurement case, and I'll do it in reverse order.

First, I think Mr. Townsend is mistaken about one thing. The costs in this case, in

A&G are just the procurement case, the case costs, not the case -- not the cost of running the auction employing the auction manager and buying the supply. The case costs are in here because as an integrated electric utility and this is an integrated case, we were required to incur the costs of bringing to you a procurement alternative and defending it. The costs of actually buying the power are allocated to the people that use that power.

But has Mr. Townsend says, if you disagree with me, that's a rate design issue, not a disallowance. It just means those dollars go in a different place. It doesn't mean we don't get to recover them.

Call centers. Call centers have always been functionalized as jurisdictional. That's why this case is not just about what we call D, distribution expense, but also, C, customer service demands.

Under the IDC rules our call center can't push our supply. We can't market ComEd's supply. We can answer questions about how customers can get supply. And those are things that are properly allocated, as they always have been to all customers.

But, once again, if you disagree with me, don't disallow those costs. They're perfectly recoverable, they just go in a different place.

I hope I've answered all the questions.

MR. TOWNSEND: Chairman Box, if I may respond to the point that Mr. Rippie made about the allocation of costs on with regards to the procurement case, the expenses there. He's correct that there is a separate item where the expenses associated with the auction are going to be recovered through the supply administration charge, but in the context of the procurement case they hired all of these people. And all of those people then were included as part of the expense associated with the procurement case.

MR. RIPPIE: I don't think -- there was a point at which Dr. LaCost (phonetic) was an expert witness for ComEd. That may be in the procurement case, but that's not what she's doing now. She's running an auction and that isn't in this.

MR. TOWNSEND: And that is a correct distinction; that all of the costs in the case including honoring Dr. LaCost for that case are included in the procurement case expense which then ComEd is proposing to recover in delivery services charges.

CHAIRMAN BOX: Commissioner Lieberman?

COMMISSIONER LIEBERMAN: Mr. Rippie, can I ask you a little bit about the Exelon Business Services Company?

MR. RIPPIE: Certainly.

COMMISSIONER LIEBERMAN: A fascinating topic.

MR. RIPPIE: I don't dream about it.

(Laughter.)

COMMISSIONER LIEBERMAN: My understanding is from reading stuff that there was a centralization of a lot of these support services, and that ComEd essentially buys those services from Exelon Business Services Company.

MR. RIPPIE: Yes, that's fair.

COMMISSIONER LIEBERMAN: Is there any evidence that looks at the alternatives? I mean, is there evidence that you can cite to that says we looked at alternatives in buying those services, and so these were the best costs we can get?

MR. RIPPIE: I think there is two kinds of evidence on that subject.

First, there is evidence that with respect to the specific services that ComEd buys from BSC, I think it's either Mr. Castello's or Mr. DeCampli's testimony, I don't remember the exact page, that ComEd looks at what those costs are and considers on a, if you will, functional basis whether these costs are reasonable.

Mr. Ratnaswamy is suggesting you might want to look at ComEd Exhibit 3, which is, I believe, Mr. Castello's testimony at pages, end of 30 and Page 31. You know, that's not a rocket science sort of thing. If we use to buy copier services from ABC copier and now we buy it through BSC, you can compare those prices.

The second piece of evidence is the

aggregate evidence analysis we did to show how much in toto pushing these things up and sharing them with customers, when that is not specific to individual items; it is not.  It does give you an item, if I can steal someone else's analogy, at the forest level as opposed to the tree level what happened.

If we were getting pillaged by Exelon BSC on the prices of those things, we wouldn't be savings customers tens of millions of dollars.

COMMISSIONER O'CONNELL-DIAZ:  Or you would look elsewhere for the supply of those services?

MR. RIPPIE:  As Mr. Castello says, yes.

COMMISSIONER O'CONNELL-DIAZ:  So there is analysis done for the market cost for whatever the service is.

MR. RIPPIE:  I don't want to leave you with the wrong impression.  You won't find a schedule here that says we looked at the cost of copiers before and it was this and now it's this.  It wasn't an issue at that level, and we didn't put it in.

What you will find is Mr. Castello describing the purchasing prices of the Company and testifying that the Company does look at the costs of the services it gets from BSC and compares them to what would be a reasonable source from somewhere else.

CHAIRMAN BOX: How does all this relate to the Security Exchange Commission as you referred to earlier?

MR. RIPPIE: There are certain BSC costs that are not charged on an item by item basis.

That is, Mr. Chairman, it's not like BSC, let's say, BSC charges 10 cents per page, I'm sure that's not what it costs. But that's an assigned cost.

There are other costs that are allocated generally. For example corporate-governed expenses. There is a formula that allocates those across the entire Exelon family "quote/unquote" families company. It does it in sort of a neutral, objective, one might even say groat mathematical way modified. It's called the Massachusetts formula. That formula is reviewed by the SEC.

In fact, in this case the SEC had a

problem of how we used to do it and told us to change it. That's what we changed it to at their request. That formula takes that pot of costs that can't be individually broken out and allocates it to the various business units including ComEd.

CHAIRMAN BOX: Any other questions?

MR. RIPPIE: Thank you.

CHAIRMAN BOX: Thank you.

Why don't we take a 10-minute break. We'll come back and talk about issues 4, which is a combination of the capital structure and the cost of common equity.

CHAIRMAN BOX: The next item is Capital Structure and Cost of Common Equity.

Mr. Rippie?

MR. RIPPIE: ComEd in its affirmative case proved that the capital structure with 54 percent equity is reasonable and lawful.

The claim that ComEd must have reduced only its equity to reflect the full amount of the pre-breakdown original costs of the nuclear assets is contrary to law, assumes that the plants were financed only with equity, when they were actually built with both debt and equity and is irreconcilable with the Commission's decision in the transfer docket and two prior rate case orders that each accepted ComEd's resulted equity without adjustments.

ComEd acknowledges, however, that the proposed order imputed capital structure is also supported by the record.  The Commission has clearly no authority to approve imputed capital structure that is just and reasonable if it properly concludes that the actual structure is not, and the Commission done so often.  When it does, it basis those imputed capital structures on comparable companies at industry standards.

While at the low end of the comparable range, the evidence shows that the 46 percent equity adopted by the proposed order is affordable.

For example, it is supported by the sample group of electric utilities deemed comparable by ComEd and accepted by IIEC.  It is supported by a group of six utilities identified by staff witness with double A ratings in the same business profile as

ComEd, and it is supported by a similar group of A rated investor group utilities identified by Staff.

Other data reinforced that if anything is at the low end of the range.  For example the S&P benchmarks in the record call for between a 48 and 55 percent equity ratio.

Staff's own sample of comparable companies show that on average slightly higher than the 46 percent used by the proposed order, and a broader sample of 25 electric utilities showed the same.

Even IIEC when they proposed a computed capital structure suggested 50/50.  And Staff's own testimony is that if an imputed Capital Structure is used 45.5 percent common equity would be needed to preserve the existing A minus or Triple B plus credit metrics.  That would be Kight rebuttal at lines 120 and 121.

Staffs agrees in its reply briefs on exceptions at 23 that this testimony would be cited to support the imputed capital structure.

On the other hand, there is no support

for the 37 percent equity capital structure proposed by others.  It is a substantial increase in leverage. It results in credit metrics below ComEd's current and prudent levels, and for debt ratios those metrics go to junk.  There is no comparable sample that would support those levels, even Staff's comparable sample; it doesn't support it on the average and none of the companies are that low.

The evidence shows that 37 percent equity would be an extreme out liar.  It is also inconsistent with past equity balances.  With equity balances not only proposed by ComEd but approved by the Commission.

Staff witnesses agree that there has been no event since the Commission twice approved equity balances for ComEd in the 5 to $6 billion range that could account for the required fall to 2.5 billion that they propose.

Apart from the capital structure, is no valid rationale to artificially lower ROE, now even below that which Staff proposed.

In fact, the proposed order is

46 percent equity imputed Capital Structure closely matches those on the sample groups on which both ComEd's and Staff's estimates were based, as you can see from the chart.

Moreover Staff's argument is inconsistent. While the proposed order's Capital Structure is comparable to the groups used to estimate the ROEs, the 37 percent artificial Capital Structure is not. It is substantially more leveraged and more risky, yet Staff nor IIEC made any analogous upward adjustment to account for that increased leverage. The new position is unsupported, inconsistent and unfair.

I will reserve my roughly minute for rebuttal.

Thank you.

CHAIRMAN BOX: Thank you.

Either or. Mr. Carmen Fosco or John Feeley.

MR. FOSCO: Mr. Chairman, since this topics includes two issues, I was going to address capital structure and Mr. Feeley was going to address Cost of

Common Equity.

CHAIRMAN BOX: Fine.

MR. FOSCO: Good afternoon.

My name is Carmen Fosco, and I'm presenting on behalf of Staff on the Capital Structure issue.

There were basically two issues presented for capital structure in this case. One was the determination of the adjusted Capital Structure supporting delivery services, and the second was whether that Capital Structure was reasonable.

The proposed order directly finds that ComEd's proposed adjusted capital structure is inappropriate because ComEd's adjustments result in an overstatement of the amount of capital supporting delivery services.

There were two basic transactions that influenced this. The first was the merger of PECO and Unicom in 2000. While Staff's adjustment isn't an accounting adjustment because of purchase accounting, ComEd recorded a Goodwill asset on its books at the time of the PECO Unicom merger.

What this basically meant was that the difference between the purchase price from that merger and the restated fair values of its assets and liabilities was booked so as to equal the purchase price with the restated equity.

What this meant was that ComEd's equity increased at that time by 2.692 -- I'm sorry 2.292 billion. This resulted because of the difference between the purchase price and what the value was prior to the purchase.

Staff actually is not in dispute with Edison that if that was the only relevant event that would be probably be an acceptable adjustment.

One thing that you have to keep in mind is that ComEd, when they filed its case also made an adjustment to its equity.

So when ComEd points to the prior rate cases and they said there is nothing to justify an adjustment here, yet ComEd itself proposed an adjustment. They don't say why, but they did.

The reason is -- our position is that

that the equity they have on their books, the financial books is not supporting delivery services.

Now what happened after that that effected Staff's judgment is that the Company then transferred its news, when Commonwealth Edison transferred its generation plants, it transferred it, under proper accounting rules, we're not saying it was improper.  It transferred the then fair value, the asset at the fair value; however, that left a Goodwill on its books.

From our perspective, and what Staff Witness Sheena Kight found inappropriate was that that caused an overstatement then of the capital supporting delivery services.  So the proposed order got that right.

Now the second part where we believe the proposed order got it wrong is that having decided that the reasons for adjusting the capital structure were proper, the proposed order then decides to discard the resulting adjusted actual capital structure.

Staff presented testimony, Staff

Witness Kight -- there are three metric services that the parties have looked at.  One was the funds from operation to interest coverage, the funds from operation to debt coverage, and then the debt ratio. Staff decided and Staff Witness Kight testified that the funds from operation to interest and debt were much more relevant metrics because they reflect the actual amount of cash flow and debt; whereas, the stark statement of equity doesn't tell you what's behind it.  So Staff discounted the equity adjustment.

The proposed order doesn't adequately address these facts, and we think you should adopt the 35.11 percent equity balance.

The last point I'll make before turning this over to Mr. Feeley is that the proposed order does not adopt Staff's Capital Structure. Because of that Staff made -- Staff's cost of equity estimate is -- would require a downward adjustment because when you increase the amount of debt, you increase the risk or the level of risk to the Company.  Staff's equity analysis was based on

Staff's Capital Structure. The proposed order adopted a Capital Structure, there should be a downward adjustment.

As a result, we support IIEC's cost of equity if you decide to maintain the Capital Structure.

I will turn this over to Mr. Feeley.

Thank you.

CHAIRMAN BOX: Mr. Feeley?

MR. FEELEY: Good afternoon, Chairman and Commissioners.

I just have a quick point here on the cost of common equity that relates to that chart, ComEd's Cross-Exhibit 14.

The cost of equity should not be higher given the Capital Structure that Staff proposed as Mr. Fosco has gotten into. It most certainly should not be higher given the Capital Structure that the proposed order recommends.

If you look at the chart they show an average for Mr. McNally's sample. One thing about that chart, though, is they're not considering short-term debt.  When you do consider short-term debt, Mr. McNally testified to this on cross, his average comes down to 45.19 percent.

Then the difference between that and the 37.21 percent for Staff's proposal, well, that's due to the transitional funding instruments, the TFIs.

And ComEd likes to forget that when it sought approval for these TFIs, it indicated that they -- TFIs are not the same as conventional debt. And ComEd put on the case that the TFIs would reduce the riskiness of common equity with a less than a burden of conventional debt.  That's in the 98-0319 docket when they got authorization for those TFIs.

If you have any other questions on cost of common equity, I can answer those later on.

Thank you.

MS. SODERNA:  Good morning, Commissioners. Good afternoon.  My name is Julie Soderna.  I will be arguing today on behalf of the Citizens Utility Board, the City of Chicago and Cook County State's Attorney's, which I will collectively refer to as

CCC. I will first be arguing the issue of Capital Structure.

The proposed order gets it right, at least with regard to its ultimate conclusion that the Goodwill asset must be removed from ComEd's capital structure; however, the proposed order then inexplicably rejects the necessary mathematical result of that conclusion.

ComEd seeks to include 2.634 billion in Goodwill. This amount is associated with the Company's transfer of it's nuclear plants to the affiliate.

ComEd's business today, however, is limited to transmission and distribution and no longer includes generation.

Since Goodwill inflates the common equity component of the utility's capital structure, it therefore inflates the rates that customers must pay.

ComEd's customers have already paid for nuclear plants and base rates and we paid for the cost of the commissioning, and now outrageously we are being asked to pay for these plants a third time when the plants aren't even owned by the utility.

Because the Goodwill asset does not support the costs to provide transmission and delivery service, it should not be included in base rates.

The proposed order's fuzzy logic is fundamentally flawed. It agrees that ComEd could not legally include the Goodwill asset in the capital structure, but perhaps in an effort to split the baby, the proposed order actually adopts inflated numbers far and above Staff's calculations.

The proposed order turns Staff's recommendation and the law on their heads by virtually picking a number out of a hat.

The law on the matter is clear. The public utilities act prohibits an increased cost of capital resulting from an affiliation with unregulated or non-utility companies.

The Illinois Appellate Court further ruled that Citizen's Utility Board BIPC (phonetic) that current ratepayers should pay for only that plant which produces current benefits.

The proposed order properly analyzes the law in concluding that the Commission cannot allow ComEd to earn a return on a plant that it does not own and does not use for distribution.

None the less, instead of the document corresponding capital structure proposed by Staff, which is 37 percent common equity and 63 percent long-term debt approximately, the proposed order mysteriously goes onto include that the capital structure should then consist of 46 percent equity and 54 percent debt.

The Commission can't have it both ways. The proposed order's conflicting conclusions can't be squared. It's recommended capital structure is wholly arbitrary and unsupported by the record.

If the Commission concludes, as it should, that the Goodwill asset should be removed from ComEd's cost of equity, it must accept Staff's recommended capital structure.

Finally, it's worth noting that Staff's recommended capital structure is very comparable to the three previously approved Capital Structures for ComEd which ranged between approximately 39 and 43 percent.

Now I will turn to the issue of cost of common equity.  CCC witness Mr. Bodmer recommends that a 7.75 percent cost of equity be used.

This recommendation is based on actual Wall Street investment bank evaluations.  These present a much more accurate picture of the Company's cost of equity than the fictional models used by ComEd.

In fact, one of the investment banks acknowledged that cost of equity used in real transactions is 3 percent less than ComEd's original 11 percent proposal.

Traditionally, the cost of common equity has not been a directly observable number, and Commissions, therefore, have relied on subjective models to estimate a utility's costs of common equity.

In this case, however, the ongoing merger of ComEd's parent company, Exelon, and TSC&G

provide real world evidence from three prominent Wall Street investment banks of the rate of the return required by investors. This information provides the Commission with the opportunity to adopt a much better cost of cost of common equity that represents a direct proxy of investor needs in the real word.

To confirm the investment bank analysis, Mr. Bodmer analyzed the market to book ratio of 71 utility companies. A company earning its expected cost of capital has a market to book ratio of one. ComEd's parent company, Exelon, has the highest market to book ratio of all utilities companies studied, a whopping 3.38. The unjustifiably high return on equity that ComEd recommends will guarantee that ComEd will over earn, which means ratepayers will over pay.

The 7.75 percent recommendation is not inconsistent with past Commission orders because of numerous changes that have occurred since ComEd's last DST case. For example, person income tax rates and dividends on capital gains have been reduced, overall interest rates have dropped.

In 2007, the utility will be able to pass costs generation costs directly to customers. And ComEd has recently completed large investments in its distribution plants.

These changes mean that ComEd's business risk and required return are lower now than ever and require the Commission to take a fresh look at the old traditional but fictional measurement of ComEd's cost of equity.

Given the availability of the direct information from Wall Street, the Commission should adopt CCC's recommended 7.75 percent cost of common equity over ComEd's inflated number.

Thank you.

COMMISSIONER WRIGHT: Ms. Soderna, has this Commission or any Commission, to your knowledge, ever adopted in whole or in part the Wall Street analysis that you purport is a cost of common equity?

MS. SODERNA: I don't believe so.

COMMISSINER WRIGHT: Thank you.

CHAIRMAN BOX: Questions panel?

(No response.)

Conrad Reddick is presenting the Illinois Industrial Consumers.

MR. REDDICK: Good afternoon. I'm Conrad Reddick appearing for the IIEC.

The Capital Structure issue presents a very simple question; what proportions of debt and equity reflect the types and the cost of capital used to provide ComEd regulated delivery services. In this case the dispute is on the equity component of ComEd's capital structure.

ComEd proposes to include in the Capital Structure that determines its delivery services costs and consumers delivery services rates equity that does not support assets used and useful in providing those services. The $6 billion in equity that is attributable to delivery services assets in ComEd's rate base is not at issue.

The equity at issue is only that portion of ComEd's more than $11 billion in total equity that supports assets the Company itself has already excluded from rate base.

The difference, some $5 billion,

supports the accounting asset, Goodwill, created by the Unicom PECO merger.

As ComEd admits, Goodwill is not a delivery services asset.  Nonetheless, ComEd asks the Commission to use equity that supports, this non-delivery service of assets in delivery services ratemaking.

The Commission has already rejected in Illinois Power's 2001 rate case ComEd's implicit suggestion that assets remaining after a generation divestiture must automatically be deemed used and useful for delivering services.

Setting rates using the cost of equity not devoted to providing delivery services artificially boosts ComEd's revenue requirement to cover costs unrelated to those regulated services.

Based on the law and common sense, IIEC and other parties oppose ComEd's proposal.

The proposed order found correctly that the law and the evidence of record require that ComEd's 54 percent equity ratio be rejected.  IIC respectfully suggests that the order would be strengthened by endorsing IIC's more straightforward analysis.

However, after rejecting ComEd's proposal, the order arbitrarily substitutes a 46 percent ratio mentioned nowhere in the record instead of adopting Staff's consciousness recommendation.

The law also requires that the Commission rejects the order's unsupported substitute, which like ComEd's 54 percent includes Goodwill equity.

Although, the order does not articulate the after-the-fact justifications that ComEd offers in its briefs, the order's 46 percent ratio does rest improperly. And as Mr. Rippie explained on the capital structure of other utilities. Even that unlawful approach cannot support the adopted capital structure.

The proposed order's 46 percent is a significant increase over the 39 percent and 43 percent equity ratios this Commission has found reasonable in ComEd's most recent cases; ratios that left ComEd financially sound, and ratios that exceed those of essentially sound firms identified in the record.

As to the order's other comparisons, there is no showing on this record that any of the comparable risk proxy groups that are displayed here are, in fact, ComEd's peers when it comes to capital structure. The record does not reveal whether the proxy's capital structures include equity not dedicated to regulated services, rate base to equity disparities of billions of dollars or other peculiarities common to ComEd's and the proposed order's and Capital Structures.

As to the cost of equity, ComEd's reliance on other Commission's cost of equity determinations for out of state utilities was directly rejected by the proposed order.

The order held, quote: "The cost of equity appropriate to ComEd is specific to that utility. ComEd may not simply adopt a cost of equity set for other utilities scattered around the country for which the facts and circumstances are not necessarily similar."

That same logic applies to the capital structure determination.

The order selects Staff's 10.19 percent recommendation over IIEC's 9.90 percent recommendation for cost of common equity solely because of IIECs complete exclusion of Goodwill and the orders's decision to include a portion of ComEd's Goodwill equity in the Capital Structure. As I have demonstrated, IIEC's exclusion of Goodwill was the proper course.

The determinative facts on this issue are unchallenged. Only $6 billion of ComEd's $11 billion in book equity is devoted to deliver services assets. The difference, which supports some $5 million in Goodwill cannot be ascribed to delivery services. It should not be included in a Capital Structure that determines ComEd's delivery services rates.

When Goodwill is excluded from ratemaking, IIEC's 9.90 percent cost of equity recommendation is the proper cost of equity.

Thank you.

MR. RIPPIE: I think there are five very brief points. It is undisputed that the effect of the merger is out of even ComEd's capital structure. And in order to get the artificial Capital Structure the intervenors and Staff propose, it is necessary to not only remove the nuclear assets, but to remove them at the original cost and take them totally out of equity even though that's not what supported them in the first place.

Second, whatever you think about ComEd's capital structure or the proposed orders, a 37 percent equity capital structure after, and it is undisputed, ComEd has reduced its debt by billions of dollars in a way that benefited customers is wholly unreasonable. There is no comparable samples supported by any witness in this case that has companies with equity percentages like that, and it would be devastating to ComEd in its financial condition.

There has been a discussion by at least two of my fellow counsel on the fact that there were equity percentages in the 35 to 41 percent in past orders. That is why ComEd -- I should say that is before ComEd reduced its debt by billions of dollars.

Equity percentages are a ratio. And when we paid down the debt as Mr. Mitchell testified we did and why we did it, that increased the share of equity even though it didn't increase equity.

And if we it wouldn't talk about consistency with prior orders, it is clear that the Commission has not once, but twice, approved equity without artificially backing out the value of nuclear assets.

Now I can get into a lengthy discussion of why rate base does not equal the total capital structure, it would actually be fun. But it's explained in the briefs.

I know Commissioner Lieberman is looking at me and --

COMMISSIONER LIEBERMAN: I'm going to be dreaming about it.

(Laughter.)

MR. RIPPIE: And I'm not going to occupy all your time with it unless one of the commissioners sort of wants me to.

But what the proposed order did was say, Look, if there is some reason to reject ComEd's 54, and with respect we don't think there is, 37 is forgive me, nuts. So we are going to look at the comparables. We are going to look at what every expert witness testified was the group of companies we ought to look at like ComEd in order to determine what the return is, and pick something that is representative of those capital structures.

That's not an aberration. That's what the Commission does every time it adopts an imputed capital structure. Unless you think that was too strange. That was IIEC's original proposal in this case.

Mr. Gorman told you to adopt an imputed capital structure and he told you to use 50/50. Now he says change that when some lower numbers were available.

But that's the other piece of evidence

in the record about what an appropriate imputed capital structure is.

I want to very briefly talk about Mr. Bodmer, but only very briefly. It is not an actual study of what ComEd's cost of equity is. It is a reverse estimate, a reversed engineering, if you will, of an out-of-time estimate of what Exelon's comparative costs were to PSEG's. It's never been adopted by any Commission, let alone this Commission and for very good reasons, which are laid out in the record.

Most importantly, it is not based on public information. It's what investors look at in determining their requirements.

And as Ms. Soderna pointed out Mr. Bodmer's market to book analysis not only is methodologically flawed for the reasons explained in the record, which again I won't repeat. But she candidly acknowledged they looked at the market to book ratio of Exelon.

The whole purpose of all these comparable groups and estimations is to determine the cost of equity of ComEd, a utility, not Exelon. And Mr. Bodmer didn't you give you anything useful on that subject.

We think you ought to adopt our capital structure. If you don't, however, 37 percent is wholly unreasonable, and the proposed order gives you a supportable alternative.

On cost of equity, Staff's methodology is superior. If you are not going to accept ComEd's 11, it is the number to use.

I suspect there are questions.

COMMISSIONER O'CONNELL: What happens at the 37 percent to the Company in the investment community?

MR. RIPPIE: Well, first of all, although Mr. Fosco talked briefly about what we call the funds from operations metrics, the debt coverage metric at that level drives us way below our current rating, I believe to what is referred to sub-investment rate or junk ratings.

Secondly, there was a discussion briefly about whether or not you go there because of the TFIs. I want to make three things clear. The TFIs did not increase ComEd's costs. TFIs actually cost less.

Secondly, if you're going to pretend that the TFIs aren't part of the capital structure, then you better take out the costs associated with them, you better back out of the analysis the amount of money ComEd collects to pay the debt service and the amount of money ComEd is obligated to pay to the people that hold those, the bond holders. And when you do that, the testimony is we flunked the funds from operations and cash flow requirements as well.

37 percent is just is not reasonable.

CHAIRMAN BOX: Commissioner Lieberman?

COMMISSIONER LIEBERMAN: Couple questions. Help me understand this. I was reading Hadaway's testimony about the risks that ComEd faces.

If we could just walk through those real briefly because I was having some trouble understanding them.

He identified four risks that made ComEd a risky investment. The first was self-generation and distribution generation.

Is there any evidence, did I miss it, about a study or expectation that's going to be a significant increase in self-generation.

MR. RIPPIE: No, there was not. And I don't think that was really his point.

COMMISSIONER LIEBERMAN: What was his point?

MR. RIPPIE: His point wasn't to quantify those risks from bottom up. His point was to find similar utilities that the Commission has approved and look at what the Staff witness did and he did.

COMMISSIONER LIEBERMAN: But he identified the things ComEd did that was risky?

MR. RIPPIE: Right, and that was one.

COMMISSIONER LIEBERMAN: But there is no evidence there is any expectation increase in that?

MR. RIPPIE: Yes, that's correct. He did not put a numerical study in or talk about an increase, that's right.

COMMISSIONER LIEBERMAN: The variance in weather, he suggested was a risk factor?

MR. RIPPIE: Yes.

COMMISSIONER LIEBERMAN: I thought the rates were sort of based on average weather, so it goes either way, right? It could be less risky or more risky.

MR. RIPPIE: Rates are based on normalized weather, and depending on the rate design, you can have a much bigger issue than Nicor, but you can have non symmetric distributions. You lose more when the weather goes against the utility than you can necessarily makeup when it goes for the utility.

But, again, he was trying to show reasons why if you were an investor, you wouldn't see a stream of income that look like a bond. You would see things that had variants, and weather does that.

COMMISSIONER LIEBERMAN: Right. And it could vary either way?

MR. RIPPIE: Yes.

COMMISSIONER LIEBERMAN: What struck me was the procurement case. If I learned anything sitting here listening was the way the idea the procurement case was designed was to insulate ComEd from risks.

MR. RIPPIE: That was our hope.

COMMISSIONER LIEBERMAN: That's what I thought we did.

MR. RIPPIE: I think you addressed a lot of that risk, but with respect that there is an appeal pending including by ComEd and there are significant risks, and I certainly don't want to reopen that issue. But there are significant risks that we both perceive and the evidence showed that the investor community perceived both in the remaining reviews post-procurement in the possibility of the legislative intervention, and in the possibility of other actions being taken in rates to prevent full recovery. There were a number of charts and reports in the record from various rating agencies on those subjects.

COMMISSIONER LIEBERMAN: I guess my point is those were efforts that qualitatively assess the risks.

MR. RIPPIE: I agree. I think some of those rating agency reports may have come close to being what you might term as being quantitative.

COMMISSIONER LIEBERMAN: Let me ask you a different question. I'm a little confused.

The equity holder for ComEd, there is only one equity holder.

MR. RIPPIE: Well, it's not -- there are tiny, tiny, tiny numbers of equity numbers that did get washed out in the merger, but functionally there is one.

COMMISSIONER LIEBERMAN: In the forest version.

MR. RIPPIE: It's like a clover, not even a tree.

COMMISSIONER LIEBERMAN: Can I interpret the 11 percent? Is it fair to interpret the 11 percent as being the rate of return that Exelon, the equity holder, requires to maintain its level of equity? I mean I'm trying to think.

MR. RIPPIE: Yes.

COMMISSIONER LIEBERMAN: In the world the way return of equity it's a signal.

MR. RIPPIE: The Appellate Court would say 11 percent or 10.9 percent or whatever the number the Commission decides is the number that investors in an open market with full information would require to invest in ComEd if ComEd was traded. It is in fact the number also that Exelon will get and will require, but because Exelon is a wholly owned subsidiary and ComEd's common stock is not traded, we look at these comparable samples. That's the way it was done from the time of memorial.

COMMISSIONER LIEBERMAN: So the argument, if I understood right, is the 11 percent.

MR. RIPPIE: Is what it ought to be.

COMMISSIONER LIEBERMAN: Is what you're telling the Commission has found?

MR. RIPPIE: Yes.

COMMISSIONER LIEBERMAN: Okay. I'm done.

CHAIRMAN BOX: Thank you very much.

MR. REDDICK: With your indulgence, I wanted to make sure the Commission understood what IIEC's position is on capital structure since Mr. Rippie twice referred to a proposal that Mr. Gorman has modified.

Mr. Gorman initially did make a 50/50 proposal, but upon reviewing the evidence in the record, the evidence that you must rely onto make your decision, he concluded that Staff's analysis of the financial ratios, the credit worthiness of the entity given the modified capital structure, and the riskiness -- I'm sorry -- the financial soundness of ComEd with the modified financial ratios, and taking into account that financial ratios themselves do not determine credit ratings, they're not the only factor, taking into account all of those things, he was persuaded by the case the Staff made that the 37 percent equity ratio was fair, would not make ComEd financially unsound, and in fact, as I said earlier, the 37 percent is far above firms identified in the record that have far lower equity ratios and even higher credit ratings than ComEd.

So IIEC, upon reviewing the record, has abandoned the 50/50 and supports Staff.

MR. RIPPIE: May I have two sentences?

MR. FOSCO: Before he does that, Mr. Chairman, may I make one point. Mr. Rippie made an assertion about the results of F0 metrics and I would like to point you to Staff's Exhibit 15.0 in Ms. Kight's rebuttal testimony where she sets forth the results of the funds operation and funds operation to debt metrics. That chart shows that the funds from operation to debt metrics issue within a BBB rating, Triple B, and that the funds operation interest coverage places under Staff proposal would result in a A rating. That's all.

MR. RIPPIE: There is some disagreement.

MR. FOSCO: That was Page 3.

MR. RIPPIE: There is a disagreement about whether that completely adjusted for cash flow. That is laid out in the briefs.

With respect to what Mr. Reddick says, I do not think we are in disagreement.

It is certainly true that IIEC abandoned its proposal and went for something lower, which was and adjusted capital structure with an adjustment that we disagreed with.

But you will search the record in vein for Mr. Gorman saying, Whoops, I made a mistake. If you do an imputed capital structure, it should be something other than 50/50. That was the point I was trying to make.

He testified to what an appropriate imputed capital structure would be. And while he abandoned that in the face of a lower number later in the case, there is nothing in the record where Mr. Gorman said, I goofed, and a 50/50 imputed capital structure would be improper derivation or unreasonable.

MR. REDDICK: One sentence, I don't think any of ComEd's witnesses who modified their testimony ever said, Whoops, I made a mistake.

(Laughter.)

MR. RIPPIE: That's not true.

COMMISSIONER FORD: Mr. Reddick, you seem to assert that even if ComEd rated in 37 percent that it would not effect their credit rating. Wouldn't that make them fall in a level 4 which would almost be junk bond rates?

MR. REDDICK: I think that was the point Mr. Fosco made.

COMMISSIONER FORD: And when we go to junk bond status, who is affected other than the ratepayers?

MR. REDDICK: I said Mr. Fosco is correct when he said it's not true, that they would fall to junk bond status.

His numbers analysis shows that ComEd with a 37 percent ratio would be Triple B, and I believe with one other adjustment that I can't recall, an A rating.

MR. FOSCO: Triple B with one metric A under the other.

COMMISSIONER FORD: Pardon?

MR. FOSCO: It's Triple B, I think, under the fund from operation to debt, and it's A under the interest coverage metrics, which is not a junk setting.

COMMISSIONER O'CONNELL: They're currently rated at what?

MR. FOSCO: I believe they're Triple B plus. They were rated A minus. I think the most recent information in the record is Triple B plus.

MR. RIPPIE: I really think this will sort of come to an end.

There is a disagreement about the calculation of that number. It is laid out in the briefs. Mr. Fosco has cited the Staff testimony. It's easy to find in our briefs.

The point, though, is if you are going to take the TFIs out and pretend that they're not there, you have to account for the fact that we are not going to get the revenues that are being used to pay the TFIs either. You can't pretend they're not there without looking at the cash flow effect.

CHAIRMAN BOX: Thank you very much.

The first issue is the treatment of the railroad class, CTA and Metra contracts.

Once again, Mr. Rippie, Balough and we have one additional Mr. Gower representing Metra.

MR. RIPPIE: Railroad customers' current rates are neither price unbundled as the proposed 2006 working group suggested rates should be nor tied in any way to ComEd's actual costs of procurement as the working group, the law and sound ratemaking suggest they should be.

ComEd proposed a rate design for these customers that included unbundled prices and that precluded distribution rates that reflected the cost of service that these customers impose on our system.

Those charges were based on a full embedded cost-of-service study that identified the individual elements of ComEd's system and the resulting unit costs. It was comprehensive. It was detailed, and it is the only cost-of-service study in the record.

Staff did not object to ComEd's costs, and it was the party who reviewed it carefully. The ALJ's proposed order acknowledges the reasonableness of that cost study and of ComEd's method of allocating embedded cost of the classes.

Neither CTA or Metra presented a cost study nor any credible evidence disputing the elements or conclusions of the cost study. Metra did not even file direct or rebuttal testimony on this issue.

Under ComEd's proposal, railroads, like everybody else, will pay for delivery charges based on their cost of service and electricity costs derived from the procurement case. Staff concurs and supports this rate design.

CTA and Metra ask the Commission to ignore those actual costs in that rate design and instead provide them what amounts to an arbitrary subsidy. That is unfair, bad policy, and necessarily harmful to other customers.

The subsidy principally arises because the differences between the way railroads take power and the way other customers take power.

Contrary to their suggestion, it would be wrong to build them along with 10-megawatt load. This sounds complained. It isn't. It costs a different amount of money to supply a railroad that has a bunch of points of service all over their service territory than it does to supply a big industrial customer or commercial customer with one campus, one building or with one point or region of service.

ComEd proved those differences. And I suggest you look at the Alongi supplemental surrebuttal, ComEd 47 at pages roughly 19 through 21. No other party --

COMMISSINER WRIGHT: 19 to what.

MR. RIPPIE: 21. No other party contests those facts. The CTA presented no credible evidence to support the assertions that there was no difference between a customer that has lots of little points of service and a customer that has one big area of service.

Rates should be cost based. There is a statutory obligation to charge them and ratemaking principles suggest you should.

We don't dispute the importance of public transportation services; however, they are not the only other large customers of importance. Ratemaking is about costs and fairness, not about which customer can argue it is the most socially deserving.

We don't give discounted rates to churches, schools, and hospitals. That isn't because we don't think they're critically important. It's because we set electric rates based on costs and use and how they're served, not by their importance.

It is not fair to other customers, especially those not served by the railroads that don't ride Metra or the CTA to have their rates increased because the railroads would pay less than their costs.

However, if the Commission at the end of the day wishes to adopt the rate design for the railroads that allows them to pay less than their costs, it should state so explicitly and make clear where in ComEd's rate structure that subsidy is going to be made up.

We are entitled to recover all of our costs. And if we can't recover them from the railroads, we will have to recover them from somewhere else.

COMMISSIONER FORD: Do existing contracts with CTA and Metra contain change in loss clauses?

MR. RIPPIE: They are subject to Commission review and approval and change. And I believe, at least in the case of Metra, they're also subject to termination, yes.

COMMISSIONER FORD: My question is why are we -- existing contracts being negotiated in the rate case?

MR. RIPPIE: You commissioners have jurisdiction over our rates. And those contracts make clear that if you decide that those rates should change, those rates can be incorporated in future contracts or future contract amendments.

We are discussing it in the rate case because you have authority to make changes. The contracts don't strip you have that authority.

COMMISSIONER FORD: I think that change of law clause should cover --

COMMISSIONER O'CONNELL: This is a cost causation issue that the entities Metra and CTA cause or certain cause to be incurred for their service, and that cost should not be spread among all ComEd ratepayers, those that as you stated earlier, do not utilize that service, that's a specific service to those that are riding the Metra or using the CTA?

MR. RIPPIE: Yes. And we presented extraordinarily detailed evidence on what the unit costs of the different kinds of distribution services were that defines the cost causation principle. That defines what their charges are under the cost causation principle.

COMMISSIONER FORD: And you don't give any special rates to schools and hospitals?

CHAIRMAN BOX: Mr. Balough?

MR. BALOUGH: Yes, if I may have a moment to set up please. I don't have a cast of thousands. We are a public agency.

Good afternoon. For the record, my name is Richard Balough. I represent the CTA.

The CTA this afternoon will focus on one paragraph of the proposed final order that is confusing, contradicts all of the other findings concerning the railroad class and could cost the CTA millions of dollars.

The paragraph is in the ordering section for rate BESRR. This paragraph should simply state that rate CCPA shall be used for the supply component if the railroads take bundled services.

The paragraph currently says that it is implementing the compromised proposal for railroads. This statement is wrong for several reasons.

Second, it would remove the CTA from the over 10-megawatt class greatly increasing the CTA's distribution costs.

Third, it is unclear how rate BESRR would be applied.

Fourth, the proposed language regarding BESRR is contrary to the public policy goals that the order adopts in the section on the railroad class.

The purpose of this rate case is to set distribution service rates that are neutral as to whether a customer purchased power and energy from ComEd or another supplier. The proposed rate BESRR instead establishes different rates.

First, the order's version of BESRR is not a compromised rate. The order mistakenly using ComEd's surrebuttal testimony so-called compromised as rate BESRR.

In fact, the ComEd quote "compromise" included eliminating rate BESRR so it can hardly be a basis for rate BESRR in the final order.

I would also add there was no

compromise. This was a proposal that ComEd had rejected in their surrebuttal testimony. The CTA certainly does not find it to be a compromised proposal and rejected it.

Second, under the proposed BESRR language, the CTA would be excluded from the greater than 10-megawatt class. It makes no sense that a customer with a peak of 120 megawatts in the winter and 90 megawatts in the summer should not be in the greater than 10-megawatt class. This is clearly contrary to the objectives the order seeks to achieve in the section on the railroad class. Demand would no longer be aggregated. A fundamental reversal of how the CTA's rates have been determined for at least the past 50 years.

The CTA with 58 owned sub-stations and its own facilities to transmit power throughout its system is an integrated system. Rates should reflect the integrated nature of the CTA system.

The proposed order states that the railroad class is designed, quote, to place the CTA in a situation where it pays similar rates to those that are currently in effect, end quote. To do so, the CTA demand must be aggregated and the peak time determined under rate GCB. This would also allow the CTA to be treated the same as other customers with loads greater than 10 megawatts.

Third, it is unclear how rate BESRR would be applied. Is it applied to bundled service or all service?

If it is for bundled service, why is the rate different when the same facilities are used to transmit power from a third party.

If it is intended for all CTA service, it makes all the discussion concerning the railroad class set up earlier in the order meaningless.

Rate BESRR should only be for bundled service. It should simply state that rate CPPA will be used to determine the supply charge.

Fourth, the order's discussion on the railroad class find strong public policy reasons why the railroad class should be in the above 10-megawatt class.

The policy reads and includes the fact

that there is an existing contract and that any shift from the current rate methodology would significantly impact and increase the CTA's cost of electricity potentially triggering a fare hike. Any fare hike could result in lower ridership.

COMMISSIONER O'CONNELL: Mr. Balough, CTA is short for what, Chicago Transit Authority.

MR. BALOUGH: Chicago Transit Authority.

COMMISSIONER O'CONNELL: Tell me how my neighbor who lives in McHenry County never comes downtown should pay for CTA?

MR. BALOUGH: We don't think they are because in our testimony, we show the cost-of-service study does not treat, does not find that the CTA's cost of service is any different than any of the other customers in the 10-megawatt and above class.

COMMISSIONER O'CONNELL: So you are not suggesting there is any subsidy here?

MR. BALOUGH: No. We are suggesting there is no subsidy. We strongly disagree with ComEd's assertions.

Now, lastly, why should this

Commission be concerned about any decrease in CTA ridership. The answer is simple. Decreased public transportation ridership increases total energy consumption. These three charts illustrate the point.

First, Americans use more energy for transportation than for any other activity.

Second, public transportation uses half the BTUs than automobiles, and one-third the BTUs than SUVs.

Third, public transportation is a cleaner alternative from an environmental perspective. Thus from a public policy perspective, this Commission should be concerned about rates that have the unintended consequence of increasing total energy consumption and adversely effecting the environment. Because we recommend and we have in our proposed language modifications to rate BESRR that would solve this problem.

COMMISSIONER FORD: So the integrated distribution company rules they have an impact on your contract? S.

MR. BALOUGH:  I'm sorry?

COMMISSIONER FORD:  The interpreted distribution company rules, they impact your contract with ComEd?

MR. BALOUGH:  We are in this case because our rates would be effected, yes.

COMMISSIONER FORD:  And once again, there was a change of law clause and you all could not come to agreement with that?

MR. BALOUGH:  Well, there is a provision in the contract that the contract can be amended upon agreement of the parties.

COMMISSIONER FORD:  Right.

MR. BALOUGH:  And there has been no agreement among the parties.  And what we are concerned about and what we have objected to in this case is that ComEd's came in and said, we are going to unilaterally change your contract, and you have no recourse.

If you look at the final order under Rate BESRR, it says well there are going to have to be certain contracts amendments made, go ahead and do it in the compliance filing tariff.

Well, if it's done in the compliance filing tariff, what type of rights does the CTA have? In essence, ComEd can put anything in that contract and we have, other than trying to object at the compliance filing stage, no recourse which we think --

COMMISSIONER O'CONNELL: That's a pretty far stretch, Mr. Balough. You wouldn't be doing your job if you were protecting the CTA from something like that.

MR. BALOUGH: Well, we would certainly be in here objecting.

But it certainly puts us in a different position than if we were in a negotiation, which we haven't.

This is a contract that has been in existence for 50 years. It had the last major amendment in 1998. So the parties are certainly sophisticated parties that could sit down and negotiate if there are issues.

COMMISSIONER O'CONNELL: And have they been negotiating?

MR. BALOUGH: To my knowledge, there has been no negotiations concerning the change.

COMMISSIONER FORD: I certainly like your visuals of cleaner air since I'm a city dweller.

MR. BALOUGH: We can make those available and put them on all the L trains, if that would help.

COMMISSINER WRIGHT: I have a question or two.

Thank you for coming the testifying.

Has anyone quantified the rate impact of ComEd's proposed treatment of railroad customers versus the treatment that's adopted in the HEPO, and if so, do you have a sense of what that rate impact might be?

MR. BALOUGH: The way we interpret the final order, and if ComEd's proposal would be adopted, we would go into the rate class of under 10 megawatts. And when you look at the difference between those two categories, we are estimating that cost to be at least 2 or in excess of $2 million. Until we know what those numbers are, obviously, we can't come up with them precisely.

COMMISSINER WRIGHT: It may be in the record, and if it isn't, then I can't really use it, but just as a matter of curiosity, what component of your overall cost of service, your service, CTA's service is impacted by your electricity bill?

MR. BALOUGH: I don't believe that number is in the record.

COMMISSINER WRIGHT: Okay. Then we can't talk about it.

COMMISSIONER O'CONNELL: Did you take issue with the cost-of-service study that ComEd put forward?

MR. BALOUGH: We took two issues with the cost-of-service study.

One, we said that the cost-of-service study should have been rather than based on the non-coincident peak, that should have been a coincident peak. And, second, we looked at the numbers, and we have testimony from our witnesses that say the cost of service as far as serving the CTA is no different than a customer taking service at 10 megawatts and above.

COMMISSIONER O'CONNELL:  This would be in your witnesses' testimony.
MR. BALOUGH:  Yes.  If you give me a moment, I can find that for you.
COMMISSINER WRIGHT:  That would be helpful.
Thank you.
MR. BALOUGH:  I can come back with it.
CHAIRMAN BOX:  Anything further?
MR. RIPPIE:  I can say it later or now, but there is in fact a citation to the rate impact.
The citation, I believe, goes to the CTA's total operating expenses, and potentially the rate impact is the -- please forgive me, Richard, I may not pronounce his name right -- the testimony of the CTA panel at Page 1427, lines 12 through 15.
CHAIRMAN BOX:  Next is Mr. Edward Gower.
MR. GOWER:  Good morning, Chairman Box, Commissioners.  Metra does serve McHenry County.
COMMISSIONER O'CONNELL:  I ride it everyday.  I know.
(Laughter.)
CHAIRMAN BOX:  Not in Winnebago County.

MR. GOWER: We do not, but you can drive in and get close.

Thank you for allowing me to address you today.

Metra provides either directly or through purchase of service agreements with other railroads inner-City service of over 495-mile radius that includes some 230 stations. We have 300,000 weekday rides, 83 million annual rides. Of the total ridership about 15 percent is due to the electric service district, which is I think the focus of today's discussion.

65 percent of Metra's electrical usage is consumed by the electrical electric train service district. The remaining 35 percent is the diesel service component of Metra service.

COMMISSIONER O'CONNELL: Mr. Gower, when you are talking about the electric service, are you referring to CTA?

MR. GOWER: No. It's a separate. It's on the south side, going out to the south suburbs.

COMMISSIONER O'CONNELL: Thank you.

MR. GOWER: The electric train service electricity is purchased, supplied and delivered pursuant to a contract that has been in existence since at least 1986. It's a requirements contract, pursuant to which Metra agreed to purchase all of its requirements, all of its electrical requirements for the train district, and Commonwealth Edison agreed to supply those needs.

The contract covers a variety of topics. It covers the charges for the service which include a demand charge. It specifies the method for calculation of that demand charge, which is an aggregated basis. It has an energy charge in it, which is basically the supply of electricity. It has a point of supply charge as a provision for taxes. It also covers a wide ranging number of other subjects which include metering, the use of one another's property and ADR alternative dispute resolution procedures.

It's probably important to both parties that the contract remain in existence because Commonwealth Edison crosses Metra property all the time and there are facilities that have been constructed on Metra's property, and conversely Metra has constructed facilities on Edison's property.

COMMISSIONER O'CONNELL: Has Metra looked into utilizing any alternative suppliers?

MR. GOWER: We are. For supplying electricity, yes. We are in the process of preparing an RFP, but that would be only for the diesel component of our electrical service because we have an existing contract with Commonwealth Edison, which would have to be modified in order to allow us to go elsewhere for the supply of electricity to the electric train district.

What has been proposed in this proceeding is a wholesale rewrite of that contract. And I would submit to you, and there was an exhibit marked, I think it was Metra Cross-Exhibit 5 or 6 that just made a hash out of the contract quite frankly. It left the articles in it, and left the provisions for use of one another's property, but it changed pretty much everything else to show what was being proposed in this proceeding.

I just point you to the provision, Section 16-129 of the Electric Service Customer Choice and Rate Relief Law of 1997. I'm going to quote that to you because I think it's important.

It says, "nothing in this law shall effect the rights of an electric utility to continue to provide or the right of a customer to continue to receive service pursuant to a contract for electric service between the electric utility and the customer in accordance with the prices, terms and conditions provided for in that contract."

Now, Metra's position here is a little bit different from the CTA's.

CHAIRMAN BOX: Excuse me. On that passage you just read, you interpret that to be any contract that you have or does your contract have termination date?

MR. GOWER: Our contract has no termination, with Edison, has no termination date. What it has is a provision which allows either of the parties to terminate upon one year's written notice. And neither party has given notice of termination.

As I started to say, Metra's position

is a little bit different from the CTA's simply because Metra's contract is different from the CTA's. Unlike the CTA's which was amended in 1998 to make reference to existing tariffs that would under Edison's proposal will no longer be in effect at the end of this year. All of the rates and charges for Metra are specified in its contract. It doesn't make reference to external tariffs.

So our position is that the Metra contract should remain in effect. What we would like to see, though, is if there is going to be notice of termination given, we are amenable to sitting down with Commonwealth Edison, as we suggested, and negotiating changes to that contract to, for example, provide for supply --

COMMISSIONER O'CONNELL: Shouldn't that be where you guys are at right now instead of before us?

MR. GOWER: You know, I'm perfectly amenable to do that. We've offered that option. It has not been, I think, considered to be an option by Commonwealth Edison. We are perfectly amenable to sitting down with Edison and attempting to negotiate changes to the contract.

Now, the CTA has proposed a number of changes to the BESRR proposal, and if that rate were put into effect, we like to think it's appropriate and it ought to be treated the same as the CTA, but because of the nature of the contract, it would require it still met the contract.

Commissioner Ford, I believe you were the one that raised the question about the IDC rules and their impact here. I think it's a red herring. I know those rules were a product of lengthy and difficult negotiations between ComEd and the parties and the Commission.

But what ComEd has come in and told you is you can't extend these contracts, you can't amend these contracts because our IDC rules prohibit us from doing that. But it's okay for us to come in and do a wholesale re-write of the contract as long as we put it in the form of the tariff.

My suggestion to you is if you're concerned about the IDC rules, we will put whatever changes are made to this contract into a tariff and incorporate those tariff terms into the contract and make them subject to the Commission review. But I don't think the IDC rules are grounds for saying you ought to allow Commonwealth Edison to engage in wholesale disregard of its existing contract obligations.

COMMISSIONER O'CONNELL: Were you engaged in the deliberations of that before the Commission?

MR. GOWER: The IDC rules?

COMMISSIONER O'CONNELL: Yes.

MR. GOWER: No, but I can imagine it was a difficult and long process. I'm out of time. I was going to talk about the environmental benefits. I think Mr. Balough has done admirable job of that.

I would point out, do you benefit or does another business benefit? I know Mr. Balough's position. He's smarter than I am in that there is no subsidy here. I know the proposed order provided that to the extent if there is any shortfall in cost of recovery, it should be provided by nonresidential ratepayers.

Every business in the Chicago area

benefits from the public transportation services provided either by Metra or the CTA. Every business benefits by less congestion on the roads. Every business benefits by the environmental benefits brought by transit agencies.

COMMISSIONER O'CONNELL: Businesses located where, sir?

MR. GOWER: In the six county Chicago area which is what is served by Metra, and the CTA serves the City of Chicago and a couple of suburbs outside of Chicago.

COMMISSIONER FORD: I think there is a state subsidy, isn't there?

MR. GOWER: There is, but I don't know -- that's been the subject of standard negotiations down at the legislature. It's caused a lot of hard feelings, I know.

Metra's fares account for about 55 percent of its funding. The other 45 percent comes from some combination of taxes, I think it's a portion of the sales tax in the six county area and some subsidy from Springfield, but that subsidy I believe has been decreased over time.

Thank you very much.

CHAIRMAN BOX: Any questions from the panel before we move on.

(No response.)

Thank you very much.

MR. RIPPIE: I will try to be very brief. I'm just going to comment on three things.

First, legal issues. Section 16-127, as the Commission knows, does not prohibit provisions to a contract where that contract expressly said that it is allowed to be revised pursuant to tariff proceedings like this.

Section 1502 of the Metra agreement says, That this agreement is subject to approval by the ICC and subject to modification by proceedings before such Commission to the same extent and upon the same grounds as any filed rate of general applicability.

You not only have authority under that contract to review what we have proposed here, a general applicability rate, but that contract specifically says that you shouldn't do what Mr. Gower suggests which is to have a private one of the negotiation and then come back and present it to the Commission.

Moreover, here's what the IDC rules say. The IDC rules, and I would say they're a great shark, not a red herring. Say quote -- it's not a pun. "An IDC shall not offer or provide any non-tariffed retail electric supply services or any non-tariff transmission and distribution services. And shall not, quote, renew, extend, or renegotiate any existing contract for any retail electric supply service unless the IDC is required..."

And then it lists a variety of reasons and cases in which it could be required to do so. None of which are applicable here.

Thirdly, the law makes clear that you should make rates based on cost of service and ratemaking considerations.

I'm not going to debate the benefits of mass transit. We know what they are. But that's not a ratemaking criteria. And when the Commission has tried to set rates based on, for example, environmental policy in the case of garbage dumps, in the past cases the Appellate courts have reversed. And I suggest that we shouldn't go there now.

Why not? Because the evidence doesn't tell us to. The evidence makes clear that the cost of delivery to a customer that has 57 points of service is different than the cost of delivering to a customer that has the same load at one point of service. That doesn't take rocket science; although, we had experts confirm that.

Look at the evidence. The cost-of-service study is extraordinarily detailed, and it aligns absolutely with common sense.

Demand aggregation makes sense in a world where generation in the case delivery were bundled. They aren't now. And as Mr. Balough says, CTA and Metra should have clear rates that apply regardless of whether they buy from ComEd or anyone else. And in order to do that, we have unbundled delivery charge and applied the delivery charge based on their 57, or however many, I think it is 57 actually, multiple points of service. They fall in whatever class is appropriate for those costs of service.

Thank you.

MR. GOWER: May I?

CHAIRMAN BOX: Please go ahead.

MR. GOWER: How do you do this? Three points? I'll cut it to two.

First, with respect to the manner in which the contract's amended. In the past, we never came in and attempted to rewrite this contract. That clause that Mr. Rippie referred has been interpreted to refer to rates of general -- amendments by rates of general applicability.

And what's happened in the past is that Edison's come in and done rate cases, and then the rates that are specified in the contract have been adjusted on a percentage basis portionably to reflect the increases that Commonwealth Edison received and then that amendment was filed with the Commission.

You can't do that here, and you can't

do that here because Edison has taken the various rates, broken them down by classes, so there really isn't a percentage applicable that could be used applicable to Metra.

Second, the IDC rules. My recollection of those IDC rules specify that the Commission could approve an extension of the contract. And with respect to Mr. Rippie's comment that that is just impossible and unlawful for you to do that here, that's what he has suggested in effect in this rate case because what he's done is come in he said in his compliance filing, we made them during the proceeding come in and show all the changes, over their objection, show all the changes that would be required to the Metra and CTA contracts. And they said we don't have to do that. That would be in the compliance file.

So in effect what they're asking you to do whether you accept Edison's position or you accept Metra's position, that contract is going to be amended because nobody wants to eliminate it because of the other provisions of the contract.

Thank you for allowing me additional time.

Any questions?

(No response.)

CHAIRMAN BOX: The position of Rider POG.

MR. RIPPIE: Federal law requires, at least at present, ComEd to purchase energy, and in some cases capacity, made available to it by a qualifying facility. We call it PERPA.

Federal law and federal and state regulations make clear that that purchase must be made at utility's avoided costs; in other words, the cost that the utility would have incurred to purchase the power at that point in time had they not received it from the qualifying facility.

They also make clear, for example, in 18 CFR 292.304 E that that compensation cannot lawfully exceed avoided costs.

In the procurement order and in the rider CPPH, and -- well, I won't use acronyms.

In the contract for procurement for hourly supply for Commonwealth Edison, it was made clear if a QF supplies power to ComEd that would reduce ComEd's hourly purchase obligations from the market. That is in that hour ComEd will have to buy less energy from the PJM at the hourly price than it otherwise would've had to do. That's what providing that megawatt hour of power would do. Our avoided costs in that hour is the spot market. It's that simple.

ComEd can no longer provide an annual avoided cost in advance as it currently does. There is no way for ComEd to accurately predict, not only the hourly price series, but also to no know in advance when the QFs will produce and that is in what hour and whether they will produce in a way that actually changes the hourly LMP in that hour.

None the less, Staff wants ComEd to guess. That will inevitably lead to an incorrect price. That's bad. An incorrect price will send the wrong price signals to QFs. It could be high or low. It could artificially stimulate QF investment or it could suppress it. We don't know. But the point is we want the actual price signal. And an incorrect price signal no matter which way it goes also results in a subsidy. Load customers are either paying the QF too much or the QFs are paying the load customers too much.

Rider POG as proposed uses that actual PJM spot market. It doesn't violate federal law or the Commission rules and sends the right price signal.

Lastly, there is no reason to assume that sending the correct price signal will discourage QF development. Indeed, by definition, it can't discourage efficient QF development.

But in any event, if you believe QFs need certainty, even under a one-year proposal, they're not going to get a certain rate over the lifetime of their investment. The best they're going to get is a year.

And then you're faced with the question, do you true it up or not. If you true it up, they don't even have certainty for a year. And if you don't true it up, you essentially made the decision that there is going to be a mismatch between avoiding costs and the POG rate in every year that any QF sells to ComEd.

PJM prices defines the hourly market. And the hourly price is ComEd's avoided costs. We suggest that both for sound rate design reasons and to respect PERPA that that which is what's proposed in Rider POG should govern the price.

Thank you. I will preserve my remaining time.

CHAIRMAN BOX: Mr. Brady.

MR. BRADY: Good afternoon.

As Mr. Rippie described Rider POG applies to retail customers who have a electric generating facility. Staff's concern with Rider POG is that it does not include a specifically stated level of compensation like the current rider does provide.

Instead, as Mr. Rippie described, ComEd is proposing to compensate qualified facilities, QFs, at the PJM spot market price.

Staff's contention or issue here is the fact that although they claim that it is in compliance with Part 430, Staff does not view that as being in compliance with the definition the Staff has for avoided costs in 430.50.

And in addition we both disagree on the signals that this would send to the market. Staff believes that current and perspective QFs would benefit from an explicitly stated level of competition in the rider.

Nonetheless, the proposed order at this time has accepted the Rider POG as proposed and modified by ComEd.

In addition, the proposed order also acknowledges Staff's concern that ComEd's proposal is not in conformance with Part 430 by encouraging Staff to initiate a rulemaking to modify Part 430.

If the Commission adopts the language in the proposed order, Staff encourages the Commission to keep that language initiating a rulemaking so that the method of calculating avoided costs set forth in Part 430 can be re-defined in a manner that accounts for the electric industry's move towards a competitive market.

Thank you.

CHAIRMAN BOX: Questions, Commissioners?

MR. RIPPIE: I think the issues are briefed and we have no rebuttal.

COMMISSIONER LIEBERMAN: Is there any evidence in the record? Do we know how many QFs there are in megawatts?

MR. RIPPIE: The answer is we know. I'm trying to recall if that's in the record right now.

MR. BRADY: I don't believe it is.

MR. RIPPIE: I don't believe it is. There are quite a few and there are several more as you know sort of in the pipeline.

COMMISSIONER LIEBERMAN: Okay.

MR. RIPPIE: You know, I will mention that none of them are here complaining about this proposal.

MR. BRADY: And none of them are here in support of ComEd.

COMMISSINER WRIGHT: I have one question. Maybe it's off the mark here, but I'm just curious. Could the avoided costs be calculated as the rate for something derived from the auction as opposed to relying on the stock market PJM price?

MR. RIPPIE: In theory, but not in practice. And there is two reasons why. First, the way those contracts are, in fact, set up for bid is that the variable QF output off sets the hourly purchase, the CPPH hourly purchase component. So if we have to reopen a procurement case decision.

There's actually a really good reason for that. The people bidding on the fixed price load in the auction want to know what the load shape looks like and they want to be able to predict what their delivery obligations will be, and the variable output the of the QF would interfere with that.

So the decision for that good price reducing reason was be to use the QF output to offset the hourly purchase obligation, not the annual or two or three-year purchase obligation.

COMMISSINER WRIGHT: Thank you.

CHAIRMAN BOX: Thank you very much.

The last issue is the utility consolidated billing with the purchase of receivables.

We have three speakers, Mr. Townsend, Mr. Rippie, and Mr. Feeley.

MR. TOWNSEND: Good afternoon, Chairman, Commissioners.

Broad policy declarations regarding competition are made meaningful by making sure that the nuts and bolts of competition properly function.

If the Commission desires competition to develop for residential and smaller business customers, it is critical that the Commission ensure the mechanics of competition work for those customers.

If you want residential and small commercial competition, you have to pay attention to the mechanics of competition.

The coalition of energy suppliers includes a diverse route of retail electric suppliers.

As you know many of them have worked in Illinois and throughout the United States to develop the competitive market for commercial and industrial customers.

It also includes suppliers that have a particular expertise in serving residential and small commercial businesses.

The message from these suppliers is clear, one of the most critical steps that this Commission can take to promote retail competition and empower residential and smaller commercial customers is to adopt utility consolidated billing and a purchase of receivables program.

ComEd's sister company PECO has that program already. ComEd's sister company PSEG already has that program in place. ComEd has failed to explain why it can't do what its sister companies can.

What is UCBPOR, utility consolidated billing purchase of receivables. Utility consolidated billing, underneath that program residential and smaller commercial customers continue to receive one bill from ComEd regardless of where the customer receives its supply from.

The RES notifies ComEd regarding the RES's charges that are to be included in that bill.

And ComEd does all the regular billing and payment processing; the same things it's already doing for its bundled customers.

As Staff noted in its report, Nicor and Peoples already have UCB programs in place in their gas choice programs.

Under the purchase of receivables side of the programs, ComEd continues to do all of the collections work. ComEd continues to collect payment for the bills that are sent to residential and small commercial customers regardless of whether they receive their supply from a RES or from ComEd.

ComEd would reimburse the RES for the RES's charges regardless of whether or not the customers pay.

ComEd is made financially whole by recovering the uncollectible expenses and program and administration charges from the RESs who are participating in the program. So who benefits from that's programs?

The coalition presents a largely unrefuted evidence that these UCBPOR programs benefit the consumers, the competitive market, and even ComEd. Not surprisingly, the Citizens Utility Board and City of Chicago sponsored a witness that said that these programs make sense.

Staff recommended that the Commission look at the experiences in other states. Today, most other deregulated energy markets across North America have UCBPOR programs in place.

The New York Commission has recognized that New York's programs have been a major success for residential customers. The utility that first implemented these programs in New York now has one-third of its residential customers in the competitive market. Residential customers in the competitive market, a third of them. These programs enable RESs to market to residential and smaller commercial customers. Including low-income customers and those customers that have poor credit histories.

Under the proposal, as it stands now, RESs would be justified in denying access to service to over 20 percent of those customers based upon their credit scores. But with the UCBPOR program, all customers can receive the benefits of competition. The benefits including long-term price stability, savings, green power (phonetic), if they want to receive green power, innovative rates. They get all of the benefits of competition underneath these types of programs. UCBPRO programs open up the competitive market to the customers who need competition the most, the customers who want competition the most.

Why do these programs work? Well, currently if a customer doesn't pay ComEd, ComEd turns off its service. If a customer doesn't pay a RES, the RES has to turn the customer back to ComEd for service, and then refer the matter to a collections agency.

Not surprisingly, a customer is four times more likely to pay ComEd who has the threat to turn off the service than pay a RES. PECO has done it. PSEG has done it. ComEd hasn't explained why it can't do it.

These programs are the nuts and bolts to make competition a reality for residential and smaller commercial customers.

Thank you.

COMMISSIONER LIEBERMAN: Can I ask a quick question just for clarification. I read the testimony a couple times.

The way that the costs are relayed back to the RES is how? Could you -- that seems like a critical point.

MR. TOWNSEND: Sure.

It's done throughout the United States in different ways. You can have a single charge-back to the RESs or when the utility purchases back the uncollectibles, there can be a discount factor associated with that. Essentially, an additional charge on top of the uncollectibles.

So you are not just paying ComEd's costs associated with the uncollectibles, but you're paying an additional cost on top of that. That was the original proposal from the Coalition. But we noted that either one of them can work.

CHAIRMAN BOX: Any other questions?

(No response.)

CHAIRMAN BOX: Mr. Rippie?

MR. RIPPIE: Let me first begin with the law and then I will talk about policy and evidentiary issues.

The Commission is without authority to do as the CES requests and order UCB or POR. If it attempted to do so, its order would be unsustainable.

The ICC, as you know, only has authority to provide -- to direct utilities to provide services as provided by statute.

There is no authority in the PUA for the Commission to order utilities to provide new services other than those specifically enumerated in Article 16, and absolutely none to provide competitive services. Indeed, those acts are prohibited.

UCB, POR are two new services and under Section 16-103 E of the Act, the Commission may not compel ComEd to offer them.

ComEd does not and never has offered to bill, analyze, receive payments, handle collections, and remit funds to third parties for services that aren't ComEd's.

CES's witnesses acknowledges that ComEd has no legal obligation to implement a POR UCB program; that is CES Exhibit 7, Page 4, lines 89 through 94 and is quote "merely recommending that ComEd adopt the proposal."

The General Assembly knew how to mandate consolidated billing. It did it in one direction. It said ComEd must allow RESs to bill for it. It not only did not say that ComEd must bill for RESs. It specifically prohibited the Commission from ordering services like that.

Shifting gears. CES, in our view, failed to demonstrate that a UCB POR program would be good for customers in the aggregate as opposed to good for RESs. Competition is about helping customers and lowering their costs, not about taking business and giving it to competitors.

We demonstrated that UBC POR would increase costs to ComEd. We explained that our IT systems and our billing systems and our customer service don't currently accommodate these programs.

And it would range in the millions of dollars to change them to do that. In addition, it would add ongoing administrative costs and ongoing administrative demands on ComEd's existing limited resources. You can expect to see more general and intangible plant in the next case if you approve this proposal. Moreover, there is no evidence in our view of whether customers will get a net benefit.

In listening to Mr. Townsend's presentation, I'm struck by the fact that he was telling the Commission that RESs would be justified in not serving low income or difficult customers. If ComEd didn't shoulder the burden of what every other business does; namely, collect its own charges, nothing in the Act imposes any hardship on RESs that prevents them from collecting the charges in the same way as any other competitive service business. ComEd has not been the third party billing or bad debt collections, or insurance business. It is not a bank and it does not factor receivables, and the Commission can't order it to start now.

Lastly, even if it were lawful and

even if it were good for customers, this isn't the case to do it in. This is ComEd's rate case, and ComEd is the only party here.

If the Commission believes that this is something perhaps with the assistance of the General Assembly that ought to be addressed, that is a statewide policy issue, and should not be debated in a ComEd only rate case where, putting aside everything else I said, would only effect ComEd's rates. Ameren wouldn't have the programs, MidAmerican wouldn't have the programs, no other utility would have the programs.

Staff in particular also expressed the concern, which I won't go into much detail because I believe Mr. Feeley will be speaking to it, that Commission rules would have to be modified if the POR UBC program were implemented.

Those were the sorts of things that were confronted in other states. Oh, and by the way, it is my understanding that PECO does not have a POR program; that if customers do not pay their receivables in two months, they get thrown off RES service and then as Mr. Townsend says we would have a different collections concern.

A rate case is not the right vehicle to undertake and discuss a major restructuring and the kinds of billing services that utilities as a whole must provide. You should deny this proposal.

CHAIRMAN BOX: Mr. Feeley?

MR. FEELEY: Good afternoon, again.

Just few short points and comments. Staff does agree with the proposed order and ComEd that ComEd cannot be compelled to offer this program.

Staff's concern about the program is that it might encourage RESs to market the customers that can't meet their credit requirements, and since ComEd and its ratepayers would be the ones responsible, not the RESs for those expenses, the cost would be recovered from other ratepayers.

COMMISSIONER LIEBERMAN: I thought Mr. Townsend just said that all costs go under the RES. This is what is confusing to me about this.

MR. FEELEY: He talks about discounted. Someone is going to have to come up with an estimate of what that discount is of those receivables. I don't think he proposed an annual reconciliation of everyone on the program. Someone is going to have to make a guess, you know, what are they worth.

And the fact that and this goes back to Staff's concern, they may be marketing to customers they normally would not market to if they were responsible for collecting on those receivables. They're shifting that expense from them, and I think Mr. Rippie covered that, to ComEd and then ultimately to ratepayers.

COMMISSIONER LIEBERMAN: That part is confusing to me. I'll ask Mr. Townsend.

MR. FEELEY: Again, Mr. Rippie went over that.

This would fall under one of the three parts of what is competitive service; that is, it's a service other than tariff service that are related to, but not necessary for the provision of electric power and energy or delivery services.

ComEd can't be compelled to offer those services. CES argued in its briefs, Well, ComEd never declared this to be a competitive service. Well, that's a red herring. It doesn't matter whether they never declared it. It meets one of three parts of what is a competitive service.

That's all I have. Thank you.

CHAIRMAN BOX: Mr. Townsend?

MR. TOWNSEND: Four points, if I may.

Thank you, Mr. Chairman, and Commissioners.

The first point is on the legal side, a wise client of mine once said that when people don't want the Commission to do something, they'll always say it's beyond your authority.

COMMISSIONER FORD: We've heard that before.

MR. TOWNSEND: The fact of the matter is that you can interpret the law in a way that says this is underneath your authority. We provided that road map for you.

You cannot order ComEd to offer an entirely new service, that is true. But you can order ComEd to modify a delivery service.

And so you then turn to the definition of delivery services. And delivery services are those services that are necessary in order for the utility to function. And it specifically says that billing is part of that. And certainly in order for ComEd to function, it has to have a collections arm as well. So two delivery services there are billing services and collection services. As a matter of fact, those are the types of services that they recover for in a delivery services rate case. And you see there are expenses associated with those.

So these are delivery services functions that you're looking at. Do you want to view this as a modification of a delivery service that ComEd currently offers.

COMMISSIONER O'CONNELL: How do you get around 16-102, 3.

MR. TOWNSEND: Well, it says that does not include delivery services. Delivery services are treated separately and apart from competitive services.

COMMISSIONER O'CONNELL: We are suppose to ignore that part, right?

MR. TOWNSEND: I believe that the definition of delivery services says what those are. And if you look at the definition within or the text within 16-113, there is a distinction between a delivery service and a competitive service.

And so if you fall into the category of delivery services, then you are into a separate category. You aren't looking at the definition of competitive services. They're separate and distinct things.

COMMISSIONER FORD: And how do you respond to Mr. Feeley's question that they would begin to use it as a marketing tool?

MR. TOWNSEND: That is one of the four points I wanted to touch on. Thank you.

That's a position that is somewhat puzzling actually because ComEd already bears the risk that those customers aren't going to pay their bills, right. So you're envisioning someone that's out there that we're going to market to who isn't going to pay their bill, and this is how encouraging us to market to those customers.

Well, those customers aren't going to

pay their bill to ComEd or to the RES. As a matter of fact, if you want to encourage the person to pay the bill then you want to have the utility consolidated bill so that its all coming from ComEd.

So the risk that we're going to market to those people doesn't increase a risk to ComEd. These people are already in the ComEd service area.

ComEd has that risk already.

The second point that I wanted to touch on was the question of costs. And the claim that it's going to be increasing the costs of the general and intangible plant, the administrative and general expenses, costs even Staff points to. We have proposed mechanisms to be able to pass through those costs to the RESs who are involved in these programs. So the question of costs is clearly a red herring. The last point --

COMMISSIONER O'CONNELL: So, Mr. Townsend, your proposal is that you or any RES would absorb all of the costs that ComEd would have to reconfigure their, I don't know, IT systems or whatever is necessary in order to effectuate this proposal?

MR. TOWNSEND: That's correct.

ComEd threw out a high estimate of 4 to $6 million. And we said that seems high to us as well, but if that's what the cost is in order to get this up and running, then include that in the costs that you're charging back to the RESs that are participating in the program.

ComEd lastly says this isn't the right place. If not now, when? You have the largest utility presenting all sorts of rate proposals to you, throwing out their entire rate book. You have a golden opportunity to extend competition to all customers, to residential customers and smaller commercial customers. That's the opportunity that's presented to you today.

COMMISSIONER O'CONNELL: Where in the record would I find this information that you just alluded to with regard to the costs associated with this and the recognition of those costs that the RESs would pick that up? Where would I find that?

MR. TOWNSEND: CES Exhibit 7.0. It originally was the testimony of Ken Hartwig, and was adopted by witness Mary Mefey (phonetic).

COMMISSINER WRIGHT: Mr. Townsend, I largely sympathize with a lot that you said, but given what may be an apparent barrier in the current Act, would it not be a better forum to take this up with the General Assembly next spring to seek a legislative change to the law as opposed to going through this mechanism?

MR. TOWNSEND: Respectfully, Chairman, (sic) this is before you. You have the ability to be able to order this now. There are other processes that could be explored. There are other ways to be able to get there, but there is a road map for you to be able to deliver the benefits of competition to residential and smaller commercial customers right now within this case.

Could the general assembly clarify the law and make it explicit or put a requirement on you to have to do this? They could.

But the question is how do you want to view your authority today? Do you want to have a restrictive view of your authority to be able to order changes to ComEd's billing system?

If a new software product becomes available and you become aware of that, and ComEd says, I don't want to change my billing system. That's a new service that you're suggesting underneath that new software. Do you really want to view that in that way or do you want to try to view your authority as such to be able to expand your authority and say we have the authority, we have been given by the General Assembly the obligation to promote competition, promote competition in an area where we haven't seen it today.

COMMISSIONER FORD: We want all our decisions to be reversible. We are already at the Supreme Court. What we're trying to say is there is another avenue. When they say the law, there is another Avenue. It can be taken to the Supreme Court, Appellate Court --

COMMISSIONER LIEBERMAN: Can I add something here. I appreciate, Mr. Townsend, your point. It seems based on what I learned over the past, I don't know how long, 100 years it feels like, 18 months, the Commission's obligation is to promote competition.

And the dilemma is that we really have none in the mass market. And you're coming to us today and saying the barrier to this is this issue of billing and receivables. And yet on ComEd's side, they're saying, Well, Commission, we don't have to change the way we do business.

And the dilemma I've got is how are we going to get to retail competition and the benefits therein if the monopoly provider of information continues to insist it doesn't have to change the way it does business? That's not really a question for you. I think it's a question for Mr. Rippie.

COMMISSIONER FORD: I think it's a question for the General Assembly because Mr. Feeley has said and Mr. Rippie has said it is the law. And he went onto read the three statements saying that we do not, we cannot change the billing process. We cannot tell a company, I want you to be billed on the 15th. This is just an example.

So I'm saying if what other way other

than billing can we do within the confines to promote competition? They raised the question. I'm certain if we did this, Mr. Rippie is going to take us to the Supreme Court.

MR. TOWNSEND: With all due respect, Commissioner --

COMMISSIONER FORD: You don't think he would?

(Laughter.)

I'm being honest.

MR. TOWNSEND: I'm being honest right back. It's 4 to $6 million for a program that will promote competition for residential and smaller commercial customers. 4 to $6 million that RESs have stepped up and said they're willing to pay.

Do you really think with all of the commercials that are running about how they want to empower residential customers, that the position that ComEd wants to take in the Appellate Court and to the Supreme Court is that in the face of a Commission order that told them to take this procompetitive step that they are now seeking to reverse your authority, that they think you don't have the ability to direct them to take that procompetitive step.

I don't think sincerely that they want to be on that page.

CHAIRMAN BOX: That's one of the trouble I have in January reading these briefs. I realize being a lawyer and having to admit that, I've seen more creative arguments in the last three or four months than I have in my entire life. And it's frustrating for me reading the briefs because not having the history and background of some of the other people, you don't know when you are being misled, so you have to read everything.

Here you're asking us and my feeling is if I have Mr. Feeley and Mr. Rippie saying it can't be done, it's against the law, basically I don't care if it's only $3 more for them to do it. How in good faith can you ask us to ignore the law even though it might be the right thing to do.

And I think a lot of the issues we are dealing with, Pension Asset, 803 million or zero. You're advocates. I understand that. But there comes a point where you have to step back and even tell your client, You know, that's not a good argument.

If this is against the law, how can you in good faith stand there and tell us to do it knowing that it violates the statute?

COMMISSINER WRIGHT: CHAIRMAN BOX --

COMMISSIONER WRIGHT: It's a matter of interpretation is what I think he's saying.

CHAIRMAN BOX: This is a theme I'm seeing over and over and over again. You have a lot of paper. You have to read it all. It's a sad state is what I'm saying.

MR. TOWNSEND: Chairman Box, I guess as your trying to evaluate the strength of this position and the conviction behind it, look at the initial briefs that were filed in the case. Look to see what ComEd had to say in its initial brief with regards to the legality of this proposal, and try to weigh that against where they are today to see the credibility of the position that you're trying to evaluate.

Certainly, I'm not here to mislead you with regards to the law. There are different ways to interpret the law, it's true.

CHAIRMAN BOX: I understand. But some of the tougher issues we have to deal with this and some other things, it comes down to what the law is, and what everybody thinks it would be better if it was changed a little bit or interpreted this way, things would go smoother and we can accomplish the goals we want to accomplish. I will ask you again the question, and maybe you can answer it: These other states that you said have this, do they have specific legislation where it specifically states this service can be provided or is it similar to our statute?

MR. TOWNSEND: I believe Illinois statute is unique, but that certainly has not been briefed or asked. I would be happy, if you would like to provide you with the supplemental answer addressing that.

COMMISSIONER O'CONNELL: Isn't it in other states they're voluntary?

COMMISSINER WRIGHT: No, they're not.

MR. TOWNSEND: Actually, they're not.

COMMISSINER WRIGHT: No, because the Commission in New York has taken affirmative action with the utilities to make them do this type of service because they put up these types of arguments that we're hearing right now where they wrote the law, which basically allows them not to provide it unless they're ordered by the Commission. The Commission has the statutory authority until the legislature changes it. And that's the position we are here in today.

Again, I think Commissioner Lieberman's, his remarks really strike a cord. My personal belief the law is on ComEd's side here, Mr. Townsend.

My personal belief is the only way this can be changed is through legislation, and that's why the law is written the way it is, so that ComEd is not forced to do something it chooses not to do.

The question eventually becomes at what point does the Commission motivate this utility to explore some of these and enact some of these programs in retail competition that are actively working in other states?

I'm yet to be convinced this is the mechanism to do it. Hopefully through a legislative process that would be a better avenue, but these programs are out there. Illinois lags far behind. It is almost embarrassing at the residential and small commercial area. I think that's a challenge for us in the future working with the utility and with the groups here in force today.

But I think I almost have to agree, I'm not sure we can concur to what the statute says today to do that.

MR. RIPPIE: Mr. Chairman, if I could answer a couple questions.

CHAIRMAN BOX: Sure. We are flexible here.

MR. RIPPIE: First, just a citation. The citation on the 4 to $6 million cost estimate is to me in rebuttal. That's ComEd Exhibit 26.0, Page 25 around lines 542. That 4 to $6 million cost is by the way the capital cost, the cost of setting up the systems, not the cost going forward of operating them or the cost incurred because of the bad debt.

And if ComEd were to be made whole, obviously, we'd have to be made whole for that too. If other customers were to be protected from subsidies, they'd, obviously, have to be protected from those costs too.

I'm not going into the law anymore. I think it's very completely brief and pretty clear.

I do want to say, though, because it is the Company's position, ComEd's position, that a rate case is not the right place to mandate it, does not, as we said in testimony, mean we are not willing to discuss and explore this program.

It is exactly what I said it is. It is a statement that we do not believe that in this venue on this record with this statute the Commission should order ComEd to implement this program.

COMMISSIONER LIEBERMAN: Mr. Rippie, let me ask you a policy question here if I could not being a lawyer.

If the Commission had the authority to do this if the law were changed, would this be something that you would see? Is this an approach that you would think we ought to do in order to enhance to begin retail competition in a mass market?

MR. RIPPIE: I guess I want to say three things.

First, it's not just authority. There are those cost issues that we talked about; set-up costs and the such.

Secondly, I don't know the answer to that because we haven't in this -- we don't in this record, and I don't personally know the answer to whether ComEd thinks this is efficient, whether they think it costs customers more than it benefits customers, or the degree to which the individual program would run afoul of the concerns raised by Staff.

I'm not being coy with you. What I'm, in fact, saying is this is one of the reasons why we are opposing doing it in a rate case. We think there is a better way to do it via a legislative procedure or other discussions.

I can't tell you how Company would come out. I imagine it would depend on the proposal and how well it protected the Company and the customers.

MR. TOWNSEND: Just to circle back to protecting other customers. Again, a theme that we heard from Staff and again just now from ComEd, I provided the cite earlier to CES Exhibit 7. It's actually at Page 11 beginning at line 238 going onto Page 12. We discussed the mechanism in order to be able to make them whole.

And, again, the idea of being able to have an annual charge and annual true-up that Mr. Feeley alluded to, that is something that's acceptable and anticipated as part of the program.

Again, it's not a brand new program to the United States. You've got lots of different templates that you can look to in order make sure that those types of questions have been addressed appropriately.

CHAIRMAN BOX: Mr. Lieberman?

COMMISSIONER LIEBERMAN: If it were 11:30, I would have a lot of questions.

CHAIRMAN BOX: Keep going and it had might be.

(Laughter.)

Any other comments? Any other comments?

(No response.)

I want to thank all of the individuals who came before us today to help us clarify a lot of these issues.

This will conclude the oral arguments. I note this will be on the agenda both next Tuesday, the pre-bench, and Wednesday. And the decision has to be made by next Thursday, July 27th.

MR. RIPPIE: Thank you very much.

MR. BRADY: Thank you.

(Whereupon, these were all the proceedings had in the above-mentioned cause on this day.)